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Supreme Court, U.S.
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No._____

IN THE

SUPREME COURT OF THE UNITED STATES

Ming Yen Hou,

Petitioner,

V.

New York City Department Of Environmental Protection,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT (USCA2 NO. 07-3155-CV)

PETITION FOR A WRIT OF CERTIORARI

Ms Ming Yen Hou
Petitioner Pro Se

177 Beach 114 Street
Rockaway Park, N. Y.
11694 Tel. (718)634-1643

QUESTIONS PRESENTED

1. Is it wrong that my injury by assigned chemical exposure after my lawsuit complaint was filed been declared by US Court of Appeals for the Second Circuit as "Out of date"; (see the first paragraph of p. 4 of the "Summary Order".0 after my medical doctor Russell Laudon came to court to testify; even when I was gravely injured by the retaliating act of assigning me to dispose huge amount of volatile chemicals by laboratory hood in violation of Osha rules? (Even after US Supreme Court expanded the scope of anti-rataliation law on June 22, 2006 by ruling on Burlinton Northern and Santa Fe Railway Co. V. White, certiorari to the US Court of Appeals for the Sixth Circuit, no. 05-259.)

2. Is it wrong that Dr. Jian Qi's deposition transcript was forbidden to be read at trial while trial judge at pretrial conference repeatedly permitted me to read it at trial? Especially when during the trial my former attorney Saurborn on March 27, 2007 presented "Notice of Subpoena " (from his computer), The defendant's attorney Madden claimed that it was "Notice of Subpoena, no affidavit of service," since we had substitute of attorney, so Mr. Saurborn returned to me the most of the file. Then at night of March 28, 2007, I looked at the return file again, I found the "Affidavit of Service " on Jian Qi, so I presented to court and the defendant' attorney,. The defendant's attorney claimed that it was "affidavit of service, no Notice of Subpona, but he was shown both documents in two separate days, Judge Sand would not allow me to say anything about it any more. (See excerpts of trial transcript, appendix p. A44-A46. And see p. 10-11; p. 19- 20 of the petition.) (Both (Notice of Subpoena" and "Affidavit of Service" were presented to court and defendant's attorney at trial, and I wrote all those

things in my "Post trial Brief" and my appeal brief to the Second Circuit.) See excerpts of trial transcript, appendix p. A44-A46 , and see p. 10-11; p. 19-20 of the petition.)

3. Is it obvious that the Special Projects Lab of Bureau of Wastewater Treatment of NYC DEP discriminated against chinese chemists when it was proven by trial transcript and by deposition transcript there were only two chinese chemists from 1987-December , 2002 (the deposition time of the lab chief Patel) among the about 25 lab personnel there; and in 1992 after Jian Qi was fired, I became the only chinese chemist there, and I presented the terrible evaluations of Jian Qi, (1992), and mine of 1994 in comparison. And there were many chinese chemists and scientists in the labs of Bureau of Water Supply, so there were plenty of chinese chemists and scientists on market? (See appendix p. A38-A43, and the telephone list of lab personnel of Water Supply. And see p. 10-11; p. 19-20of this Petition.)

4. Is it obvious that the lab chief of Process Control Labs of the Bureau, Purnima Dixit, under whom I worked until Dr. Jian Qi was fired by the Special Projects Lab Chief Patel, discriminated against chinese chemists when she openly made the statemen tin Jamaica Process Control Lab :" We Indians are Aryan, Hitler said we are the best " in presence of a chinese chemist Yvonne Huang. Such statement was confirmed by deposition transcript of December , 2002, and I questioned her (Dixit) and read her deposition transcript at trial.? (See the excerpts of trial transcript and deposition transcript, appendix p. A45-A49. And see p. 10- 11 and p. 19-21 of this petition.)

5. Is it obvious that the Asian Indian Lab Chiefs discriminated v. non Asian Indian lab personnel in general,

when former colleague Michael Golden testified so at my trial, and when several chemists of the Bureau filed complaints of discrimination with NYS Human Rights ? (I put those claims in my proposed pretrial Order, and I tried to read about one claim at trial, but trial judge forbade me to. See excerpts of trial transcript, appendix p. A95-A103).

6. Is it wrong that I was forbidden to read deposition transcript of 2002 of former colleague Richard Odorfer for impeach purpose, the trial judge ordered him to testify a new, even when Ordorfer desperately appealed to him that he only could say by his memory (in 2007)? (See excerpts of trial transcript, appendix p A32-A37; A50-53.)

7. Is it wrong that defendant's then attorney raised **new and false claims** in defendant's "Reply" brief of their motion for summary judgment? In the "Reply" , defendant's attorney claimed that I did not protest against the denials of promotion of 2000 and 2001; and defendant's attorney claimed that I complained about physical laborious work assignment of "Inventory", that I expected special treatment, so my age discrimination claim should be dismissed ? Appendix p. A54-A60; A11; and p. 4-5 and p. 6-7 of the Petition.

8. Is it wrong in the Report and Recommendation of Feb. 2004 that the Magistrate judge dismissed my claims of denials of promotion of 2000 and 2001 by misleading and false claims in Defendant attorney 's "Reply" that I never protested against those two denials of promotions, when in fact I filed Motion paper on 1/29/02 and protested against the denial of promotion of 2001 vehemently, and I protested the denial of promotion 0f 2001 in letters to Judge Sand and to then defendant's attorney in 2001. And in forensic

accountant's 'Plaintiff's Economic Damage served on defendant's attorney on December 31, 2002, the dead line of Discovery, I protested against the denial of promotion of 2000, and even earlier than that, I protested about the rather secret promotion to then defendant's attorney, andndefendant's then attorney wrote about the promotion of 2000 ?.(See appendix p.A56-A60 .)

9. Is it wrong that Report and Recommendation of Feb. , 2004, magistrate judge dismissed my "Age Discrimination" just by the twisted false statement of defendant's attorney, that magistrate judge even forgot his own court Order of June 24, 1999, in such Order , the judge specifically ordered defendant to produce portions of the personnel files of the individuals that provide age, education and employment history. Which was due to my Motion of May 4, 1999, in which document I specifically requested the documents of chronic listing of the ages of the chemists who were chosen for promotion within the Bureau of Wastewater Pollution Control. My ADEA claim was about denials of promotion to me due to my age, I was the oldest of all?

In spite of the fact after the dismissal of the claims of denials of promotion of 2000 and 2001 and ADEA, my then attorney Saurborn and I wrote to Judge Sand to protest those obviously wrong dismissals, but we were all denied of.

10. Is it wrong that Judges and defendant's attorney made two parties stipulation on me that I was not allowed to talk about technical things, since I have proven my superior performance in chemical work by deposition done in 2002 on my former colleague Odorfer and Lab chief Patel, (and I got outside expert witness' evaluations to support those testimonies. Especially by court order earlier, on Feb. 20,

2001, defendant's attorney answered my Interrogatories that I was not promoted because of my technical deficiency. Appendix p. A60-A63. But then before the trial, the judges eliminated my rights to present any merits of my technical contributions, just allow defendant to attack at my "personality",. Those answers to my "Interrogatories" were not change able .Appendix p. A52-53;A69-A72.

11. Is it wrong for defendant (DEP) to disregard and sent back the NYC Personnel's "Certification" on the Promotion list to comply with NYS Law to replace provisionals within four months after the eligibility list was established?(The list of Promotion to Associate chemist was established on 5/7/97). The list was first certified to DEP on May 30, 1997, then the re-certification was on Nov. 6, 1997, by then DEP already got additional positions of Associate chemists approved, then they were able to keep the provisional associate chemists. I was list no. 1, the provisional lab supervisor Sarikhani did not make the list. They only appointed me on November 24, 1997, From May 7, 1997 to September 7, 1997 was four months, thus delayed my promotion almost three months. Thus I could not replace the provisional associate chemist Sarikhani as lab supervisor, then I could not be justified to become Associate chemist , level II, (the standard level for supervisor of chemical labs of the Bureau), **and later after I was pushed to retire**, DEP made the standard level for chemical lab supervisors as level III, I could not get any of those opportunities, was that wrongfully depriving my rights? Especially by NYS Civil Service Law, section 65, provisional appointment must not exceed 9 months, Sarikhani's provisional appointment as Associate chemist already had been for years. And by the section 65, the provisionals must be replaced by the eligibles no later than four months after the establishment of the civil

service list ? P. 2-3 of the Petition., And appendix p. A66-A68 ?

12. Is "Counter Attack matter of defense"? Is it wrong that I was not allowed to use my proven superior technical contributions to attack defendant's discrimination in not promoting me ? DEP even not recognizing my contributions but giving me terrible rating in the year of contributing (1998), that was after my filing the law suit complaint, surely "Retaliation!"

13. Does the injustice on me permit even encourage continuous discrimination of the Asian Indian Lab Chiefs toward non Asian Indians lab personnel, especially professional chemists ? (The fact is that Dixit was promoted to the Chief of all the laboratories of the Bureau last year, i. E., The Process control Laboratories; The Special projects Laboratories and the Biological laboratories of the Bureau of Wastewater Treatment , NYC DEP ?

14. Is it wrong that the US District Court used a letter of 1975 of a supervisor (Kirschner) to decide that I was difficult to work with and had communication problems to rule out my discrimination claims, when the charges were never proven, but forbade me to read Dr. Jian Qi's deposition transcript at trial? Please see the "Opinion " of the District Court.?

15. With all the documental evidence presented, and with all the trial transcript and the appropriate portions of deposition transcripts in the appendix to the Second Circuit, should the Second Circuit Court have reversed the decision of the US District Court, Southern District of New York ?

16. In case if I am allowed to write Brief On the Merits, then is it evident that I should write about my repeatedly presented in my Post Trial Brief; my Appeal Brief and my trial testimonies what I seek: Economic damage; Compensation due to Pain and Suffering and Reimbursement of my legal Expenses ? (See p. 4 of this Petition.)

PARTIES TO THE PROCEEDING

The parties to this proceeding are:

1. Petitioner Ming Yen Hou.

2. Department Of Environmental Protection, City Of New York.

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C. On p. 4 of the Summary Order, it claimed that the evidence showed I was considered difficult to work with, and had communication problem. Those were not proven at trial. It was entirely by a letter of Kirschner of 1975 (more than 30 years ago). And I quit the job with NYC DEP for the wrongful treatment of 1975-76, then I applied for unemployment insurance with NYS Department of Labor. After investigation, I was vindicated of any fault, and there was a letter from NYS to NYC DEP , see p. 5-6 of this document, and Appendix P. A71-A72 . 27

D. On p. 4 of Summary Order, it claimed that my former counsel was **unable** to produce an affidavit of service. That was entirely untrue and twisting. When we had transfer of attorney , my former attorney Saurborn returned most of the file to me. He came to court on March 27, 2007 to present a copy of "Notice of subpoena" from his computer, he did not keep the "affidavit of service", But then I looked into the returned file more, and I found the "Affidavit of service" on Dr. Jian Qi, so on March 29, 2007, I moved to present the found "Affidavit of service". Judge Sand left it to the defendant's attorney Madden, Madden looked at it and claimed that it was an "affidavit of service", not "Notice of Subpoena", the court would not allow me to talk about it any more. . 27-28

E. On p. 4 of the Summary Order, the Second Circuit court claimed that my law suit primarily involved alleged discriminatory acts occurring prior to the filing of my complaint in 1998. But my medical doctor's testimony would be on the harmful and wrongful assignment of disposing huge amount of volatile chemicals, which I testified specifically as "Retaliation". And I specifically questioned Patel at trial about that and other questioned matters which I also questioned Sarikhani, such as bad memorandums and bad evaluations, which belonged to continuous Retaliation. 28.

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5. In my Proposed Pretrial Order, I listed the complaints of the Bureau chemists with NYS Human Rights, at trial I tried to talk about how racism the Asian Indian Lab Chiefs were, but the trial judge forbade me to. 30-31

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PETITION FOR WRIT OF CERTIORARI

Petitioner Ming Yen Hou respectfully petitions for a **Writ Of Certiorari** to review the decision and order of the United States Court of Appeals for the Second Circuit.

OPINIONS BELOW

The decision of the United States Court of Appeals for the Second Circuit affirmed the decision of the United States District Court for the Southern District of NewYork to dismiss the law suit complaint filed by the petitioner versus New York City Department of Environmental Protection.

Jurisdiction

On April 9, 2009 the United States Court of Appeals for the Second Circuit affirmed the District Court's decision that dismissed the petitioner's law suit versus New York City Department of Environmental Protection of Discrimination Because of race and National origin; ADEA and Retaliation. On May 7, 2009, the Second Circuit entered a judgment mandate dismissing the appeal. The jurisdiction of the court is invoked pursuant to 42 U. S. C. # 200e-2;venue: 42 U.S.C. #2000e-5(f)(3).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

This case involves Title VII of the civil rights acts of 1964, 42 U.S.C. # 2000 e –2 to 2000 e-17,includinding Ritaliation provision, venue 42 U.S.C. #2000 e –5 (f) (3) and Age Discrimination in Employment Act of 1967, 29 U.S.C. # 621-634, (amended in 1984, 1990 1986.

STATEMENT OF THE CASE

The petitioner filed law suit complaint with U.S. District Court, Southern District of New York on March 2, 1998, the grounds were Discrimination because of race and national origin by title VII; and Age Discrimination; and checked on continuous retaliation. She filed charges with EEOC in 1997 (and Internal discrimination complaint in 1994); Defendant's attorney filed Motion to dismiss the case, the motion to dismiss was denied in entirety by trial Judge in August , 1997.

UNLAWFUL DELAY OF PROMOTION BY CIVIL SERVICE EXAMINATION:

Before commencement of the law suit, the civil service promotion list to Associate chemist was established on 5/07/97, I was ranked list no. 1. A certification from City Personnel to replace provisional Associate Chemist in compliance of NYS Civil service Law # 65 was sent to NYC DEP on May 30, 1997, but DEP would not comply with the law to replace its provisional Associate Chemist., so DEP Would did not set its hiring pool. A re-certification to DEP on November 6, 1997 was sent to DEP, at that time, DEP already got additional positions for Associate Chemists, so DEP set its hiring pool. Since DEP got additional positions for Associate Chemists, so DEP would not have to replace its provisional Associate chemists. I was appointed from the list on November 24, 1997. Appendix P. A66-A68.By NYS civil service law , # 65, that provisional employee must be replaced by eligible within four months after the establishment of civil service list. Section 65 of NYS civil service law also stated:" No provisional appointment shall continue for a period of excess of nine months" those

provisional appointments including then lab supervisor Sarikhani 's, had been for years already. Thus my appointment was almost delayed three months. Hiring pool was for DEP to set upon receipt certification from NYC Personnel, it was hiring pool set up by the agency. When DEP did not replace their provisional
Associate chemists, Sarikhani continued to be my lab supervisor, Patel and Sarikhani exercised their power to retaliate against me because of my filing discrimination complaints. Since I ranked list no. 1 on the promotion list, if DEP complied with the State Law and set up hiring pool within 30 days after receiving the first certification of May 30, 1997, I should have replaced Sarikhani in June. As the first permanent (civil service) Associate chemist in that Lab, I would have been the legitimate lab supervisor Associate Chemist , level II. NYS law & My letter to mayor about the two certifications. There was "list progress" published in the paper "The Chief", which gives certifications made. Appendix p. A67- A68 .

DENIALS OF PROVISIONAL PROMOTIONS:

a. In year 1998, there were two provisional promotions (not required by civil service exam.) to Associate Chemist, level II and level III., namely Vikram Shah was promoted to ,(stated in Defendant attorney's letter of of 4/7/00 in docket no 78,) and Trikam Patel was promoted to level III of Associate chemist, (recorded in Patel's personnel portion, in docket no. 100.) All the documents which I refer to in this Booklet are in the Appendix of my appeal to the USCA2 for the second circuit
b. Then in year 2000, Patel was appointed Administrative Director of Labs, (Exhibit in docket no. 78).
c. In 2001 there were two provisional promotions to Associate Chemist, level II, including one for . Sarikhani. Appendix p.A56-A60 . I was denied of all of those provisional promotions, in spite of my proven record of

superior performance and contribution to DEP methods, which were all been proven by deposition transcripts on then colleague (Odorfer) and supervisor (Trikam Patel). And outside expert witness evaluations---not necessary, just by deposition transcripts are suffice. Appendix p. A69-A72.

ADEA CLAIM WAS ESTABLISHED IN 1999.

I was the oldest one in the Bureau Chemists, (my date of birth has been in the law suit complaint form supplied by the pro se office, written as 6/29/31, since my law suit complaint included age discrimination. Although in my Motion of May 4, 1999, which resulted that conference, in the "Affirmation", item (4), I requested for chronic listing of the ages of the chemists who were chosen for promotions within the Bureau of Wastewater Pollution control,. Magistrate Judge Henry Pitman issued an Order on June 24, 1999, in item 2 of the Order, it was "No later than August 16, 1999, defendant shall produce those portions of the personnel files of the following individuals that provide age, education and employment history." Appendix P. A54-A55.

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AT TRIAL I TESTIFIED ABOUT THE COMPENSATIONS I SEEK: (On March 26, 2007 and April 2, 2007,) (And in my Post Trial Brief and Trial Brief, I wrote accordingly, which included compensation due to denials of promotions, about $692955 and monetary compensation for my pain and suffering; and the reimbursement of legal expenses---in 8/07 it was already about $84000, now it would be more, it was written in my appeal brief p. 28-30, and Post Trial Brief p. 25-26, and the appendix to appeals court p. 1047-1080, which gave calculations ordered by judge Sand, (Trial transcript p.7, line 17-21). I also testified about it on (trial transcript p. 474-476.)

Evidence established by Deposition about my superior performance and I was a Quiet Worker; Never had any Problem With Coworkers. All three former coworkers Testified positively about me. And I have proven as a good supervisor material. Appendix P. A73-A76.

Then in 2002, our deposition s on my then colleagues and supervisors, evidence was established that I accomplished and contributed to the Special Projects Labs of the Bureau tremendously in making the wrong methods right and making the incapable lab to accomplish the "Track Down" project of Pcbs. And my then colleague Odorfer testified in deposition and in trial that I was a quiet worker, and he never knew that I had any problem with any one except with the lab supervisor, (Odorfer testified so even at my trial) because Sarikhani and Patel attacked me wrongfully, Sarikhani, who was a provisional Associate chemist, who did not make the list of the Promotion exam. , but I was a civil service chemist, I ranked list no. 1 in the promotion examination Appendix p A63-A67.

TWO SIDES "STIPULATION", WHICH I PROTESTED VEHEMENTLY.

During the law suit, by the Order of magistrate Judge, defendant's attorney had to answer my Interrogatories, in the letter dated Feb. 20, 2001, then defendant's attorney L. Kaplan, gave reasons of denials of promotions purely on technical strength. Appendix p. A60-A63. **That is not changeable**. But later after I proved my technical strength and superior contributions during my tenure at DEP by depositions on my colleagues and supervisors, (also by the evaluation statements of outside expert witness.) **then before trial, the defendant's attorney made stipulation with the judges that no technical things I was permitted to present at trial, only defendant could charge me on "Personality". Such two sides stipulation was protested by me vehemently, and the trial judge firmly forbade me**

to talk any thing about my technical work, see excerpts of trial transcript, appendix P. A51-A53;A69-A72 . And the personality attack on me was not proven, the personality attack was only by a letter of 1975, (more than 30 years ago). For the mistreatment of 1975-76, I quit the job with DEP, (later returned to DEP due to the lay off of my Transit Authority Job By civil service practice.) After I quit the job with DEP in 1976, I went to NYS Department of Labor to apply for unemployment insurance benefits, after investigation, I was vindicated of any fault, I got unemployment insurance benefits, which was very unusual, when one quit a job, one could not get unemployment insurance benefits. There is a letter written by NYS Labor Dep't. to NYC DEP of 7/30/76, It stated:" Claimant left her job with your Agency for reason which to her were compelling. The circumstances under which she left are not disqualifying ."I testified about it at trial. Appendix p. A72-A73.

DEFENDANT'S FALSE NEW CLAIMS IN THEIR "REPLY" TO MY OPPOSITION TO DEFENDANT'S MOTION FOR SUMMARY JUDGMENT AND JUDGE PITMAN WRONGFULLY USING THE FALSE NEW CLAIMS OF DEFENDANT'S "REPLY" TO DISMISS MY CLAIMS OF DENIALS OF PROMOTIONS OF 2000 AND 2001 AND MY "ADEA" CLAIM. Appendix p.A10-A12.

My then attorney Saurborn did not receive defendant's "Reply", defendant's attorney raised new claims: a. Defendant's attorney claims that I never protested over the denials of promotion of 2000 and 2001. That was entirely false. I not only wrote letter to Judge Sand and to then defendant's attorney to protest, I also filed a motion on January 29, 2002, in which I specifically protested the denials of promotions of 2001. And we had forensic accountant sent his reports (calculation) on

economic damage to me due to the denials of promotions. That forensic accountant sent his report to defendant's attorney on December 31, 2002, (dead line of Discovery.) in which report, we protested denial of prom. Of 2000 and all other times of denials of promotion. But the magistrate judge in his Report and Recommendation of Feb. 2004 used the "Reply" of the defendant's attorney and claimed that I never protested the denial of proms. Of 2000 and 2001, and he dismissed my claims of those denials of promotions. (How wrong it is!) See Federal Civil Procedure 15 (b), and appendix p. A56- A60.
b. The ADEA claim, defendant's attorney in defendant's "Reply" claimed that I claimed on ADEA was because I was assigned to "Inventory work", which was strenuous to one of my age, magistrate judge Henry Pitman went along with defendant's attorney, and he dismissed my ADEA claim by R.R. But the fact is that the ADEA claim was already established at beginning of the law suit. In our first conference on June 16, 1999, I told Magistrate Judge Pitman since the law suit included Age Discrimination, I would ask defendant to give me the date of birth of chemists of the Bureau who had been promoted over me. Please see Judge Pitman's Order of June 24, 1999, (Appendix p A54-A55), he Ordered that defendant give a list of names, their personnel portions that provide AGE, education and employment history to me. But when writing R.R., Judge Pitman was completely taken by defendant attorney's false claim in "Reply" and dismissed my ADEA claim

CONTINUOUS RETALIATION:

During the course of law suit, there were continuous Retaliation to me by defendant. Even in the R. R. of Judge Pitman, when he wrote about "Retaliation",

On its p. 57, Judge Pitman described the adverse job action after I filed complaint with DEP's EEO office in July , 1994; after I filed Charges with EEOC on Nov. 6, 1997 ;" plaintiff filed her complaint in federal court on March 2, 1998. Later that same month, Sarikhani issued plaintiff a warning memorandum, and thereafter, a quarterly evaluation dated May 28, 1998, which rated her performance as 'conditional'. Those poor evaluations eventually led to DEP's chief of personnel warnining plaintiff that she would be demoted if her performance did not improve."So Judge Pitman denied defendant's motion to dismiss My "Retaliation" claim. Appendix p. A12-A13. Most of those Retaliation events Written by Judge Pitman were testified by me at trial of 4-2-07. On p. 13 and 14 of my appeal brief, I specifically wrote what I testified on April 2, 2007. I wrote a separate section "C." for "Retaliation", in item 1 of section C, I listed three bad memos after each time of some moving of my complaints of discrimination. (appendix p A26-A29, my Post Trial Brief). In addition , I testified on 4-2-07, the very harmful assignment of disposing huge amount of volatile chemicals in lab hood, which violated Osha's rules, especially I had to dispose those chemicals in a dysfunctional fume hood. I testified at trial and questioned the Asian Indian Lab Chief about it, (the Osha's rule forbade using lab hood to dispose volatile chemicals, and it required the flow rate of the hood must be minimum of 100 ft/min., the hood I was assigned to use only got flow rate of 31/66, 31 ft/min when the front panel fully open, 66 ft. /min, when the front panel was half open, measured by third party inspector on the day of accident.) Please see Appendix p. A78 , I testified about that horrible assignment at trial, and I questioned the Lab chief Patel about it at trial. (See appendix p.A29-A31). I wanted my doctor (Dr. Russell Laudon) to testify about the injuries and the complications from it, which I suffered from that assignment, (exposure to volatile

chemicals,) Judge Pitman permitted it, but Judge Sand sent Doctor Russell Laudon away when Dr. Laudon came to court to testify. Appendix p. A24-A25 & A 77-A78. (Excerpts of trial transcript.) I managed to enter my Exhibit 26 at trial, it gave good amount of evidence of injury caused diabetes. I also gave evidence about my eyes and heart ailments developed by the diabetes which in turn was caused by the chemical exposure.And in my appeal brief, p. 19-20, I wrote about theose things, and I wrote that in my entered evidence, exhibit 26, it included the assignment sheet of 5/14/02, lab supervisor Sarikhani assigned Asian Indian chemist Chandy to list and pack the volatile chemicals and then they would send those to hazardous company to dispose them. (I entered this exhibit 26 at trial, recorded on p. 404 of trial transcript). I clearly written that it was not only discrimination, it was retaliation. I testified specifically about retaliation events on April 2, 2007, I repeatedly testified those events as retaliation, and I testified as the classification as "Retaliation", please see appendix p. A19-A21 , which are excerpts of trial trail transcript. The chemical exposure injuries have been whole body, in my entered exhibit 26, it gave good amount of volatile chemical caused diabetes, which would cause complications for heart and eye ailments. I got those ailment gradually. Medical doctor's advice are entered at my post trial brief, Appendix p. A76-A80. ,and I put in my eye doctor's statement about my glaucoma and dry eye sydrome (since 2004), and my abnormal EKG since 2005.

At trial I also questioned the Asian Lab Chief Patel about the fact that from January to June of 1995, he put me on a non working machine for about six months, he admitted that the results were not recorded and not used. Appendix p A 25-A26. That was after I made complaint with DEP EEO office on discrimination. He first took me off the original busy station "Volatile

Organic Compounds", than he put me on the nonworking useless machine, than from July of 1995, he put me to wash dirty glass wares full time for more than half year. I also questioned him about that at trial, other Chemists never been treated like that, even in Judge Pitman wrote in R.R. about my then colleague Boris Sheynker's deposition transcript submitted by defendant's attorney.I also questioned Boris Sheynker at trial , he admitted It completely that he was not assigned much to wash others' dirty glass wares except when he first started, when he did not know the work there. They did it to me for about 8 months after I was in that lab about one and a half year All those things were written in my Appeal Brief, and gave reference of USCA2 Appeal appendix page no. for the trial transcript.

But Judges of Court of Appeals denied my "Retaliation" claim!

EVIDENCE OF DISCRIMINATION:

a. About evidence of discrimination, even without Dr. Jian Qi's deposition transcript, it is actually established.At trial I questioned lab chief Trikam Patel and confirmed that there were only two Chinese chemists in his Special Projects labs 1987 through 2002 , December , 2002 was his deposition time. Appendix p.A38-A39. And I proved that there were plenty Chinese chemists available Appendix p. A41-A43. And at trial I questioned Patel that he fired Dr. J. Qi by a bad evaluation in 1992, and I presented the evaluations of mine for 1994 and Dr. Qi's in 1992 at trial. Both Chinese chemists got such horrible evaluations. Those things I specifically wrote in my "Post Trial Brief" and my "Appeal Brief", and I gave USCA2 appendix and Trial transcript references, all transcripts were part of my USCA2 appendixes . And I proved that there were plenty Chinese chemists available. Appendix p. A38-A43..

b. About "Affidavit of Service" on Dr. Qi, I presented it at trial on 3/29/07, two days after my former attorney Saurborn appeared in court with "Notice Of Subpoena" on 3/27/07. See excerpts of trial transcripts, Appendix p. A43-A46. . But the court left the matter to defendant's attorney Madden to decide, Madden said that it was an affidavit of service, not "Notice of Subpoena", and Madden rejected it, but he was shown "Notice of Subpoena" by Mr. Saurborn two days earlier at trial, see excerpts of transcripts, appendix p. A44. . Since we had transfer of attorney earlier, Mr. Saurborn returned the most of the file to me, after the trial day of 3/27/07, I searched the massive returned file again, and I found the "Affidavit of service ", so I made sure to present it at trial day of 3/29/07. The trial court just denied me of a chance. Appendix p. A43-A46. US Court of Appeals, Second Circuit wrote that there was only "Notice of Subpoena", but no "Affidavit of Service", that was entirely wrong. I wrote those things specifically in my "Appeal Brief", p. 17-18. .

c. And I presented the sworn complaint with NYS Human Rights of my other chinese colleague at the Process Control Labs of the Bureau, in fact I was transferred to the Special Projects Lab from the Process Control Labs in Feb. of 1994, while at the Process Control Lab, I was also under the other Asian Indian lab Chief Purnima Dixit. At trial I questioned Dixit and read her deposition transcript , in the deposition transcript Dixit admitted that she openly said at the Jamaica Process Control Lab:" **We Indians are Aryan, Hitler said we are best." It is on p. 70 of her deposition transcript, and she even sent to my former attorney Saurborn an "Errata" about the title and name of the Indian chemist, to whom she directly and openly said those racial slur. e Appendix p. A46-A49.** .

With tremendous evidence that proved DISCRIMINATION AGAINST CHINESE CHEMISTS in the chemical labs of Bureau of Wastewater Treatmentof NYC DEP, the Second Circuit of US Court of Appeals still Claimed that Discrimination was not proven to go along with The local court, WRONG, WRONG, WRONG!!!

THE TRIAL JUDGE FORBADE ME TO USE DEPOSITION TRANSCRIPT FOR IMPEACH PURPOSE TO PIN DOWN TESTIMONY OF IMPORTANT WITNESS.

Regarding to an important witness, Richard Ordorfer, my then colleague, we had his positive testimony pinned down at depositions in October of 2002. But when he was at my trial to testify, I was forbidden to use his deposition transcript for impeach purpose, the trial Judge Sand wanted him to testify a new, even when Odorfer claimed that he only could testify what he remembered. (deposition was in October , 2002, and the trial was in March of 2007). And I wrote in my Post Trial Brief and in my Appeal Brief that Odorfer later was my tenant in the Rear Bungalow after I retired, between landlord and tenant there was dispute, I had to evict him, so personal relation became hostile, I did need To read his deposition transcript to pin him down. But still, Odorfer testified some things to support my case, but about technical things , which were not allowed for me to talk about , I could not get any chance to talk or pin down witnesses. **But the fact Judge Sand would not allow me to read deposition transcript for impeach purpose on Odorfer, It is entirely un-ethic, it was intentional to impose injustice .See excerpts of trial transcripts, Appendix p. A50-A52.**

When USCA for the Second Circuit wrote to affirm the

Judgment of the local court, it never elaborate about my "ADEA" claim, and it never mentioned about my very much emphasized and repeated claim of "Retaliation", it is terribly wrong , ESPECIALLY when the US Supreme Court has Expanded scope of Anti-Retaliation Law on June 22, 2006. Appendix p. A15-A18.

SUMMARY OF ARGUMENT

UNLAWFUL DELAYED PROMOTION:

I had to conduct my trial as Pro Se, the trial Judge disrespected my rights and displaced such disgust and oppression since I was Pro Se. Judge L. Sand always cut me off when I tried to present my case, he even forbade me to to use deposition transcripts to pin down witness' testimony. Hiring Pool was up to DEP to set up . As I wrote in "Statement of the Case", p. 2-3, the so called "hiring pool" was none other than set up interview appointments, DEP could set up the "hiring pool " any time within 30 days after receiving certification for the list from NYC Personnel. DEP only set it up after second time of certification of the promotion list to Associate Chemist from NYC Personnel. As I explained on p. 2-3 of this document, in the "Statement of The Case". How can any court holds the time of "hiring Pool" to justify the delayed promotion? The delayed promotion cost me the opportunity to replace the provisional Associate Chemist I , the lab supervisor Sarikhani. Because DEP purposely delayed the date of hiring pool the approval of additional Associate while awaiting for the approval of additional slots of Associate Chemist. Thus I lost the opportunity to become Lab supervisor, since I ranked list no. 1, I would be the first to be appointed. Associate chemist II, level II was the standard level for chemical lab supervisor in the Bureau." Associate Chemist" is a civil service title, level I, II, and III are assignment levels.

DENIALS OF PROVISIONAL PROMOTIONS:

There were seldom civil service promotions in recent years, because NYC personnel seldom give civil service examinations any more. So almost aa the promotions were provisional. Whem it was only promotions within the title, i. e., from level I to level II and from level II to level III of Associate Chemist, it was provisional promotion Once I was appointed from civil service promotion list to Associate chemist as list no. 1 on November 24, 1997, I attained highest city civil service title of chemist. Then in 1998, there were two provisional promotions to Associate chemist; level II and level III, namely Vikram Shah was promoted to level II, and Trikam Patel was promoted to level III of Associate Chemist. As a result, in 2000, Trikam Patel was promoted to Administrative Director of Labs for the same jobs of the level III of Associate Chemist. And in 2001, the provisional lab supervisor was promoted to level II of Associate Chemist.

I got proven record of accomplishments, and I made the wrong methods right and made the incapable lab capable because I taught them to succeed the "Track Down " project for detecting Pcbs in sewage. Those were all proven by depositions on my then colleagues and lab Chief Patel. But I was not allowed to talk about technical things at trial due to the two sides "stipulation" under my vehement protest.

Of course I was denied of all those provisional promotions.

MY ADEA CLAIM WAS ESTABLISHED IN 1999 FOR DENIALS OF PROMOTIONS BY AGE DISCRIMINATION WHICH STARTED IN 1990, 1992 AND 1993 AND MY DENIALS OF PROMOTIONS OF 2000 AND 2001 WERE PROTESTED OVER AND OVER,

BUT MAGISTRATE JUDGE PITMAN TOOK THE FALSE CLAIMS OF DEFENDANT IN DEFENDANT'S "REPLY', WITHOUT EXAMINING THE COURT ORDERS AND DOCUMENTS OF MOTIONS, AND WITHOUT INQUIRY WITH MY THEN ATTORNEY BEFORE HE MADE SUCH HARMFUL WRONG MOVE MERELY BY DEFENDANT'S FALSE NEW CLAIMS IN DEFENDANT'S "REPLY", I WAS ADVISED BY LAWYERS THAT NO NEW CLAIMS WERE SUPPOSED TO ADD IN "REPLY", AND NO ANSWER WAS SUPPOSED TO BE SENT IN. MAGISTRATE JUDGE MADE IMPORTANT DECISION BY **ABUSE OF** DISCRETION, AND DISTRICT COURT JUDGE BLATANTLY DENIED OUR MOTION PAPERS INTENDING TO CORRECT THE WRONG DISMISSALS.(My MY FORMER ATTORNEY IN" OPPOSITION TO THE R.R." TO CORRECT THE DISMISSAL OF 2000 AND 2001 DENIALS OF PROMOTIONS, AND I, AFTER BECAME PRO SE AGAIN, WITH PERMISSION OF DISTRICT COURT JUDGE SAND, FILED MOTION "CORRECTION" TO CORRECT THE WRONGFUL DISMISSAL FOR MY ADEA CLAIM. BOTH OF OUR ATTEMPTS WERE DENIED BY JUDGE SAND.

My ADEA claim was a claim based on denials of promotions, See p. 4 of this document, Judge H. Pitman even issued an Ordep. 10-11 of this document.r on June 24, 1999, (after the conference of June 16, 1999.) In its item 2, it was :" No later than August 16, 1999, defendant shall produce those portions of the personnel files of the following individuals that provide age, education and employment history."

It was too obviously wrong that Magistrate Judge H. Pitman in his R.R. of Feb. 2004 dismissed my ADEA claim and my claims for denials of promotion of 2000 and 2001. Judge Pitman on p. 43 of his R.R. cited defendant's Memorandum of Law (Reply) at 12, and wrote " plaintiff's sole argument with respect to age appears to be that she was forced to perform inventory despite her age." .Appendix p. A11.

And on p. 37 of the R.R., Magistrate Judge H. Pitman cited Defendant's Memo at Law at 7, (Reply), and claimed: "there is no mention of those promotions in plaintiff's complaint, and plaintiff has not made a motion to amend her complaint to include these claims. While I appreciate that Rule 15 of the Federal Rules of civil procedure provides for liberal amendment of complaints, there must be at least some notice to the opposing party;" appendix A11. The fact is that I surely notified the opposing party about my protest against the denials of promotions, in my letters to then defendant's attorney , and to Judge L. Sand, and most obviously my Motion was filed on Jan. 29, 2002., in which I protested in the "Notice of Motion" about denials of two provisional promotions of 2001, and my forensic accountant put in the denial of promotions of all the years, which included the denial of promotion of 2000. That report of Economic damage was sent to defendant's attorney on December 31, 2002, by the dead line of Discovery. Defendant's Motion for Summary was filed in the early part of 2003. Then my then attorney Saurborn filed in my "Declaration In Opposition To Defendant's Motion For Summary Judgment " on April 13, 2003. And Defendant's Memorandum of Law In Reply To Plaintiff's Opposition, And In Further Support Of Defendant's Motion For Summary Judgment" By docket no. sheet of the District court was April 25, 2003.) was filed in after our "Opposition".(by the sworn certificate of service of my then attorney Saurborn, it was April 15, 2003).

Please see Federal Civil Procedure 15 (b), and appendix p. A55-A60. .

Because in Defendant's "Motion For Summary Judgment", defendant did not raise those claims (ADEA and Denials of promotions in 2000 and 2001, so those were new claims, defendant should not have raised new claims in their "Reply', And Magistrate Judge should have checked at his Own Orders and Motion Documents , and regarding to denials of promotion in 2000 , he should had known the letter of former defendant attorney Leonard Kaplan's letter to me , dated December 18, 2001, it was reply to my protest over Patel's promotion to Administrative Director of Labs, It was kept secret, so I was not certain that it was in 1999 or 2000. He wrote as: "Please be advised of the following: (1). Trikam Patel was not appointed to the position of Administrative Director of Laboratories in 1999. He was appointed in 2000." That letter was put in Exhibit "H" of my "Declaration In Opposition To Defendant's Motion For Summary Judgment.' Filed with court on April 15, 2003. And in my then attorney Saurborn's "Plaintiff's Declaration In Opposition of R.R. Feb. 17, 2004" filed with court Feb. 27, 2004, in its Exhibit "H", it was the Report For Economic Damage to me by our Forensic accountant, in it therewere damage done to me by the denial of promotion of 2000 and all other denials of promotions. That report was sent to defendant's attorney at December 31, 2002, the dead line of Discovery.

Judge Pitman dismissed my ADEA claim and my claims of denials of promotions of 2000 and 2001 by discretion, and he relied on the false claims of defendant's attorney, he did not check official files such as Orders: Motions filed. After we filed "Opposition to the R.R.on Feb. 27, 2004, and the "Correction" of June 14, 2004, by permission of Judge Sand. neither Magistrate Judge nor District court Judge Sand would correct those obvious wrong things. Appendix pA10-

A14. for the appropriate portion of R.R. and "Reply" of defendant. And see p. 6-7 of this document.

TWO SIDES " STIPULATION ", WHICH I PROTESTED VEHEMENTLY.

Formerly defendant's attorney Kaplan , representing the management and supervisors of the Bureau labs, answered my "Interrogatories" by his letter of Feb. 20, 2001, it gave reasons of denials of promotions purely on technical strength and seniority. Appendix p. A60-A63. **THOSE ANSWERS ARE NOT CHANGEABLE .But before trial, because I had shown tremendous evidence of technical strength by deposition and the reports of outside expert witness, the defendants attorney made stipulation with the judges that I was not permitted to present any technical things at trial, only defendant could attack me on "Personality". At trial, Judge Leonard Sand scolded me and forbade me to talk about my technical work. And the personality attack was not proven. See p-5-6 of this document.**

CONTINUOUS RETALIATION

At trial of 4-2-07 I presented repeatedly about the continuous retaliation by defendant, (of course I checked "Continuous retaliation" on my law suit complain tform from Pro Se office). I wrote on my "Post Trial Brief" and my "Trial Brief" repeatedly about the retaliation acts such as the three bad Memorandums; bad evaluations , which all happened after some complaints of discrimination. Even Magistrate Judge Pitman in his R.R. denied defendant's claim on "Retaliation". See p. 7-10 of this document.

And I specifically testified at trial about the most harmful assignment of April , 2002, I was assigned to dispose huge amount of volatile chemicals by the defective laboratory hood, in violation of Osha's rules. That assignment caused me terrible diabetes, which as complication developed my

heart failure and eye ailments, (I put those record in Post Trial Brief.) Appendix p. A78-A80. **US Supreme Court expanded Scope of Anti-Retaliation Law on June 22, 2006On the case of Santa Fe** Railway v. Sheila White, on the certiorari to the US Court Of Appeals for the Sixth Circuit, No. 05-259. Sheila White was merely assigned to a dirtier and more laborious job, but I was assigned to an unlawful, unnecessary harmful job to dispose huge amount of volatile chemicals by defective laboratory hood, it was shown in lab supervisor's assignment sheet about one months after my injury that an Indian Chemist Chandy was assigned to list the volatile chemicals and the lab supervisor Sarikhani would pack those up with Chandy and send the packs to hazardous companies which got special set up to handle the hazardous chemicals. (Entered as evidence at trial . See p7-10 of this document.) My doctor , Russell Laudon even came to court to testify about my chemical vapor caused debates and its complications, the trial judge would not let him testify and sent him away. I entered as evidence of my Exhibit 26, which included Dr. Laudon's letter and the results of my blood glucose before and after the injury, I also put those documents in my Post Trial Brief. , my blood glucose went from100 mg/dl to approx. 580 mg /dl, a terrible figure, and I put in doctor's advice about how harmful diabetes are to eyes and heart and the statement of my eye doctor that I had multiple eye ailments and my abnormal heart EKG results in 2005, all in my "Post Trial Brief." EKG all in my "Post trial brief". Appendix P.A76-A80.

Any mistreatments after the commencement of legal actions on Discrimination are surely counted as retaliation, but the terrible and mounted "Retaliation acts" are not counted by the local court and the Second Circuit , it is certainly wrong.

OVERWHELMING EVIDENCE OF DISCRIMINATION IS DENIED BY COURTS.

Please read p. 10-11.of this document.

a. At trial, I questioned lab chief Trikam Patel and confirmed that there were only two Chinese chemists in his Special Projects Labs 1987 through December, 2002. (by deposition time of December, 2002, because I had to use deposition transcript on him to pin down his trial testimony.)And Patel fired Dr. Jian Qi in 1992 by a bad evaluation. And I presented the terrible evaluation of mine for 1994 and compared Dr. Qi' evaluation of 1992 with it at trial. I had been long tenured before I ever worked under the Asian Indian lab chiefs Dixit (at the Bureau Process control labs)and Patel(at the Special Projects Labs starting Feb., 1994), otherwise I would certainly been fired by the Asian Indian Lab chiefs.

b. About "Affidavit of Service" on Dr. Qi, I presented it at trial on 3/29/07, two days after my former attorney Saurborn appeared in court with "Notice of Subpoena"on 3/27/07.Those things are proven by the excerpts of trial transcript. Because we had transfer of attorney Mr. Saurborn returned most of the files to me. I did not find the "Affidavit of Service "earlier, then I found it in the returned file and presented to court. See appendix p. A43-A46. (Excerpts of Trial Transcript; and Section b of p. 11 of this document.)

Both "Notice of Subpoena " and "Affidavit of Service were presented to court and to the Defendant's attorney.

C. At trial I presented the sworn Complaint with NYS Human Rights of my former colleague Yvonne Huang of the Process Control Labs of the Bureau, because I was transferred from the Process Control Labs to the Special Projects Labs in Feb. of 1994, while in the Process Control

Lab , I also worked under the other Asian Indian lab chief Purnima Dixit. **At trial I questioned Dixit and read her deposition transcript, in her deposition transcript, done in December of 2002, Dixit admitted that she openly said at Jamaica Process Control Lab :"We Indians are Aryan, Hitler said we are the best"** That Quote was in Yvonne Huang's Sworn NYS Human Rights's complaint. It is on p. 70 of Dixit's deposition transcript, and Dixit even sent a sworn "errata" to my former attorney Saurborn about the title and name of the Indian chemist to whom she openly said those racial slur.. Dixit denied both Yvonne Huang and me of the provisional promotion to Associate Chemist I in 1993. Instead, Dixit promoted her country woman, an Asian Indian Lallu Manachan to that position, who did not even have a Bachelor's degree. I questioned Dixit about those things at trial ,and excerpts of Dixit's deposition transcript, appendix p.A46-A50.

The discrimination against Chinese chemists in the Bureau chemical labs are proven beyond any doubt. I got information even at the present , there is noChinese chemist in the Special Projects Labs about total 25 lab personnel; and there is still only one Chinese chemist retained in the lowest title of Assistant chemist for about 30 years, his name is Peter Chang, among totally about 50 lab personnel in the process control lab.

But in the central labs of Bureau of WaterSupply of DEP, (on the same floor of my former working place,)there were a lot of Chinese scientists and Chemists, see their telephone list. Appendix p.A41-A43. That proved that there were plenty of Chinese chemists and scientists on market, but the Asian Indian Lab Chiefs would not hire nor keep Chinese chemists.

THE PICTURE WAS BEAUTIFUL OR UGLY?

District court judge forbade me to use deposition transcript for impeach purpose to pin down testimony of important witness:

At trial I was forbade to use deposition transcript to pin down testimony of former colleague Richard Odorfer, while deposition was done in 2002, the trial was in 2007, and Odorfer's memory was faded a bid. And Odorfer later was my tenant in the Rear Bungalow (2004-05) after I retired, between landlord and tenant there was dispute, I had to evict him, so personal feeling was bad. I did need to read his deposition transcript to pin down his true testimony. Although Odorfer still testified things to support my case, but he testified much more to support my case at deposition. See excerps of trial transcripts, appendix A. A32-37; A50-A54.

THERE HAS BEEN HORRIBLE INJUSTICE IN THIS CASE, IT IS EXTREME ABUSE OF "DISCRETION" OR "INTENTIONAL"!

The case got tremendous evidence, the District Court judges did everything to depress my rights and chance of justice!!!

The Second Circuit Court went along with the District court; completely disregard the truth and facts which I repeatedly emphasized with references and evidence, it is not "over look," it surely was abuse of Discretion and looked like Intentional to make me bear injustice.

BRIEF OF THE SUMMARY ORDER OF THE SECOND CIRCUIT; AND MY PROTEST.

The whole writing of the Summary Order is

prejudice in favor of the Opinion Of The District. Court

a. On page 2 of the "Summary Order", about the district court's partial grant of summary judgment, there were two parts of it:

1. Age Discrimination that was already established in 1999. See the court order of Magistrate judge Pitman of June 24, 1999, Appendix p. A54-A55. In the affirmation of my Motion of 5/4/99 ,item (4), I requested for a " chronic listing of the ages of the chemists who were chosen for promotions within the Bureau of Wastewater Pollution Control, starting 1990. Also give names of those chose...., give document which state the date of birth of mine, ...". Then in Magistrate Judge Pitman's Order of June 24, 1999, in its item 2, "No later than August 16, 1999, defendant shall produce those portions of the personnel files of the following individuals that provide age, education and employment history...." Appendix p.A54-A55.. My ADEA claim was based on denials of promotions. before Judge Pitman wrote the R.R. of 2/04, he did not even bother to look at his own Order, in his R.R. of 2/04, p. 43, item I, : " Claim based on age discrimination", he wrote: ".....(Def. Memo of Law at 12) Plaintiff's sole argument with respect to age appears to be that she was forced to perform inventory despite her age (Hou Dep. At 588-89)...", the so called "def. Memo of Law " was the "Reply " of defendant's, no new claims were supposed to be written in, and my former attorney Saurborn did not even receive a copy after the R.R. came out in 2/04, I had to go to the court house to make a copy for Saurborn of the "Reply". I wrote about the dismissal of my age discrimination in my appeal brief, p. 24-25. Please

see p. 4 and p.15-18 of this document. The Second Circuit Court is terribly wrong. And I wrote in my later Motion paper "Correction" about my claim of Age Discrimination and my claims of denials of promotions of 2000 and 2001, it is docket no. 100 , that Motion paper was with the permission of Judge L. Sand, but he denied my request to correct the errors.

2. The denials of promotions of 2000 and 2001, the Second Circuit Court claimed that it was also proper to grant summary judgment in favor of DEP (dismissing my claim of denials of promotions of 2000 and 2001.) I wrote clearly in my appeal brief in p. 23-24, please see p. 37 of the R.R., Magistrate judge Pitman cited def. Memo of law at 7, and wrote: " There is no mention of these promotions in plaintiff's complaint, and plaintiff has not made a motion to amend her complaint to include these claims. While I appreciate that Rule 15 of the Federal Rules of Civil Procedure provide s for Liberal amendment of complaints, there must be at least some notice to the opposing party; a complaint can not be a moving target Appendix p. A11 See Federal Rule of civil Procedure 15 (b), and trial of these issues may occur without such amendment. The so mentioned " these issues" are in the law text book, "Representing Plaintiffs In Title VII Actions, Volume 1, by Kent Spriggs." On its p. 331, section 846, "--Instances of Discrimination occurring after the filing of the charge ; "It is well established that acts occurring after the filing of an administrative complaint may be presented at trial without the necessity of additional administrative charges being filed if they are similar in nature or probably related to the original allegation. As the court explained in Gamble v. Birmingham Southern Railway Co. In

provisions of a consent judgment, the Eleventh Circuit stated that it would use Title VII principles including those applying to the construction of charges of discrimination. The charging party filed a charge that he had suffered discrimination in promotions. Thirteen months later he was denied a specific promotion. The defendant argued that a charge was required for the class member to litigate the legality of that promotion, but the court of appeals held that the original charge would suffice.

Federal Rule of Civil Procedure 15 (b) provides the proper tone., and trial of these issues may occur even without such amendment." Appendix p. A56-A60.

The fact is after Judge Pitman dismissed my age discrimination claim and my claims of denials of promotions of 2000 and 2001 by his R.R., my then attorney Saurborn filed "Plaintiff's Declaration In Support of her Objection to The Report and Recommendation, dated Feb. 17, 2004",.. In that document we presented all the protests which I sent to Judge L. Sand and then defendant's attorney , and in my Motion filed on January 29, 2002, (in that Motion paper I protested about the denial of promotions of 2001). And we also included a letter of then defendant's attorney of December 18, 2001. who answered my protest about the denial of promotion of 2000. And we also included the "Economic Damage" report by my forensic accountant, which included the denial of promotion of 2000. That report was sent to then defendant's attorney on December 31, 2002, (the dead line of Discovery .And see p. 3-4 and p. 14-18 of this document.

b.On p. 3 of "Summary Order", Second Circuit

Court claimed that I offered no evidence at trial to support my conclusion allegations that my supervisors were racist or that I suffered from disparate treatment due to my Chinese heritage.

That statement is entirely wrong. I was not allowed to read Dr. Jian Qi's deposition transcript at trial when I really should have been allowed to, because both the "Notice of Subpoena" (presented by my former attorney Saurborn on 3/27/07, a copy from his computer.) And the "Affidavit of Service" on Dr. Jian Qi was presented by me on 3/29/07 by a Motion at trial. Because we had Substitute of attorney, Mr. Saurborn returned most of the file to me, after 3/27/07, I looked at the return file again, I found the "Affidavit of Service", on 3/29/07, at court I moved to present it, but defendant's attorney said :"This is affidavit of service, not notice of subpoena." But "Notice of Subpoena ' Already had been presented two days earlier, the same defendant's attorney (co-counsel Madden) said: "This is Notice of Subpoena, not Affidavit of Service". Madden twisted around. Judge L. Sand would not allowed me to talk about the subject any more. See excerpts of trial transcript, Appendix p. A44-A46, see p. 10-11 and p.19-21. of this document.

At trial I presented my former colleague Yvonne Huang's complaint with NYS Human Rights and I questioned the Asian Indian Chief of Process Control Labs, Dixit. Both Huang and I worked under Dixit in Process Control Labs, then I was transferred to the Special Projects Lab in 2-94. Dixit denied the provisional Promotion to Associate chemist I in 1993 to both Huang and me, instead, Dixit promoted her country woman Monachan, who did not have a college degree. **And see "Evidence of Discrimination on p.**

10-11 and p. 19-21 of this document. When the Asian Indian Lab Chief openly shouted in front of the Chinese Chemist Yvonne Huang at Jamaica Lab: " We Indians are Aryan, Hitler said we are best!", She admitted in her Deposition transcript of December of 2002, and I questioned her at trial, she could not change it, How could we Chinese feel that we had been treated equally ??? Appendix p. A46-A49.

c. On p. 4 of the Summary Order , it claimed that the evidence showed I was considered difficult to work with, and had communication problem, those were not proven at all. It was entirely by a letter of Kirschner of 1975, (more than 30 years ago). And I quit the job with NYC DEP for the wrongful treatment of 1975-76, then I applied for unemployment insurance with NYS Department of Labor. After investigation, I was vindicated of any fault, and there was a letter from NYS to NYC DEP, see p. 5-6 of this document, and appendix p A72-A73. .

d. **On p. 4 of the Summary Ordor, it claimed that my former counsel was unable to produce an affidavit of service. That was entirely untrun and twisting. When we had tranfer of attorney, my former attorney Saurborn returned most of the file to me, He came to court on March 27, 2007 to present a copy of "Notice of Subpoena" from his computer, he did not keep the "Affidavit of Service" . But then I looked into the returned file more, and I found the "Affidavit of Service" on Dr. Jian Oi, so on March 29, 2007, I moved to present the found "affidavit of Service", Judge Sand left it to the defendant's attorney Madden, Madden looked at it and claimed that it was an "affidavit of service", not "Notice of Subpoena", the court would not allow me to talk about it any more, See the excerpts of trial transcript, Appendix p.A43-A46 Idid write those things in "Post Trial Brief"**

and my Appeal Brief. and gave references of the page numbers of trial transcript, all the trial transcripts were put in the appeal appendix. Second Circuit judges should have read my Briefs. Aappendix p. A43-A46 , those are excerpts of the trial transcript. And see p. 10-11 and p. 19-21 of this document. And the Asian Indian lab Chief Dixit of the Bureau Process Control Labs, said openly in Jamaica Lab:" We Indians are Aryan, Hitler said we are the best", she admitted it at deposition, p. 70 of the deposition transcript was read to her at trial. She can not change it. And my former colleague Yvonne Huang's sworn complaint with NYS Human Rights quoted that, because it was in Huang's presence.. See p. 11, sub. Item c of this document. See Appendix p. A46-A49.

e. On p. 4 of the Summary Order, the Second Circuit claimed that my law suit primarily involved alleged discriminatory acts occurring prior to the filing of my complaint in 1998. But my medical doctor's testimony would be on the harmful and wrongful assignment of disposing huge amount of volatile chemicals, which I testified specifically as "Retaliation . And I specifically questioned Patel at trial about that and other questioned matters such as bad memorandums and bad evaluations which belonged to continuous Retaliation. See p7-10; p.18-19 of this document..

f. All over the "Summary Order", the Second Circuit Court kept claiming that the district court did not abuse its discretion. But from record, it shows that the district court surely abused its discretion. Outstanding incidents:

(1). When my former attorney Saurborn and I surely presented both "Notice of Subpoena" and "Affidavit of Service", see excerpts of trial transcript, Appendix p. A43-A46, the court still would not allow me to read Dr. Jian Qi's deposition transcript.

(2). On my appeal brief, p. 29, Appendix p.A91-A95, I listed A,B, C, D, E, F, G items of abuse by defendant's attorneys. Judge Sand always silenced me and sustained defendant attorney's black lies, when there was nothing mentioned about the subjects at the two hearings of Magistrate Judge Pitman, (see the two Orders of Judge Pitman : From conferences of March 15 and March 22, 2007 before trial Appendix pA81-A95. Defendant's attorney would claim that those were precluded. **Such as items C, D, E.**

All over the record , it showed that Judge Sand abused his discretion to impose injustice on me.

(3). Judge. Sand 's "Opinion" emphasized so much of the letter of more than 30 years ago, (see his Opinion), that letter, without sworn in, was used extensively to destroy me. But Dr. J. Qi's sworn deposition in December of 2002, and both Notice of Subpoena and Affidavit of Service were presented to court and to defendant's attorney, but it was not allowed to be read at trial. That is surely abuse of discretion.

(4). **Magistrate Judge dismissed my claim of age discrimination and claims of denials of promotion of 2000 and 2001 merely by the new claims raised by "Reply" of defendant's attorney, the judge did not check at his own Order , nor my Motion papers, and he would not bother to inquire with my then attorney, so that we could have a chance to tell him the truth He dismissed my age discrimination claim and claim of denials of promotions 2000 and 2001, <u>that surely is abuse of discretion. And Judge Sand refused to correct those errors.</u>**

REASONS FOR GRANTING THIS PETITION FOR A WRIT OF CERTIORARI:

1. Overwhelming evidence of discrimination, see p. 10-12; p. 19-21 of this document.

2. Proven continuous Retaliation, see p. 7-10; p. 18-19 of this document. There has been an expanded Scope of Anti-Retaliation Law by US Supreme Court on June 22, 2006, on the case of **Burlington Northern &** Santa Fe Railway v. Sheila White Certiorari to the US Court of Appeals for Sixth Circuit, No. 05-259. Sheila White was merely assigned to a dirtier and more laborious job, but I was assigned to an unlawful, unnecessary harmful job to dispose huge amount of volatile chemicals by defective laboratory fume hood. More details on p. 18-19 of this document. Appendix p. A15-A18.

3. My ADEA claim was established in 1999, see Judge Pitman's Order of 6/24/99, Appendix p.A54-A55, and with the denials of promotions of 2000 and 2001 were new claims raised by defendant in "Reply", and it has been proven that those dismissals were wrong. See p. 6-7 and p. 13-18 of this document .See Federal Civil Procedure 15 (b), Appendix p.A56-A60. .

4. I have suffered so much due to discrimination And retaliation on that job, and I have had to Pay out tremendous amount of money for Legal expenses, I am in a terrible financial hole, I need to get justice to pay back debts.

5. In my proposed Pretrial Order, I listed the Complaints of the Bureau chemists with NYS Human Rights, see Appendix p.A95-A101. . At trial I tried to talk about how racism the Asian Indian lab chiefs were, but the trial judge forbade me to,. excerpts of transcript, Appendix p A101-A103. .,

6. The Asian Indian Lab Chiefs would not hire, Nor keep; nor promote Chinese chemists. The denial of my case, only encouraged the Asian Indian Chiefs to be more discriminatory. **The proven open racial slur of Dixit:" We Indians are Aryan, Hitler said we are the best!" See p. 11 and p. 20-21 of this document. And Dixit got a big promotion Last year.**
Please read the whole document, and the appendixes.

CONCLUSION

This petition for a writ of certiorari should Be granted.

Dated: June 23, 2009.

Respectfully submitted,

Ming Yen Hou

Ming Yen Hou,
Petitioner Pro Se
177 Beach 114 Street
Rockaway Park, N. Y.
11694. (718)634-1643.

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(2)

Supreme Court, U.S.
FILED

09-173 JUL 7 - 2009

OFFICE OF THE CLERK
William K. Suter, Clerk

No._____ **APPENDIX**

In The

SUPREME COURT OF THE UNITED STATES

Ming Yen Hou,

Petitioner,

V.

New York City Department Of Environmental Protection,

Respondent.

APPENDIX On Petition For Writ Of Certiorari To The United States Court Of Appeals For The second Circuit
(USCA2 No. 07-3155-CV)

APPENDIX FOR MING YEN HOU

Ms Ming Yen Hou
Petitioner Pro Se
177 Beach 114 Street
Rockaway Park, N. Y.
11694. (718) 634-1643

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A15-A17

US Supreme Court's decision on a case of "Retaliation some significant excerpts of the decision as published in "Case Law". A17-A18

Some excerpts of trial transcript on April 2, 2007, I specifically testified about "Retaliation."

A19-A23.

Some excerpts of trial transcript to show that my medical doctor came to court on the morning of March 28, 2007

A24-A25

Some excerpts of my "Post Trial Brief, " as examples of continuous Retaliation .

A25-A31

My "Post Trial Brief", starting from the second paragraph of p. 10, continued all page of p. 11 to the top portion of p. 12, including item (10): At trial of March 29, 2007, my former colleague Michael Golden attested for retaliation and discrimination against me by the Asian Indian Lab boss Patel . A31-A32.

My "Post Trial Brief"", p. 10 -p. 11, item (11): My former colleague Richard Odorfer, at trial of March 28, 2007, attested for the retaliation and discrimination against me by the lab bosses Trikam Patel and G. Sarikhani .

A32-A37

Selected portion of my "Post Trial Brief" as reference for the overwhelming evidence of discrimination about me.

A37-A43

Item (2) on p.. 1 of my "Post Trial Brief", extended to the top portion of p. 2 of my "Posy Trial Brief" ; The contents of the Item (2): Dr. Jian Zhong Qi's deposition

transcript should be read at trial.

A43-A46

Item (12) on p. 12 of my "Post Trial Brief", extended to the top portion of p. 13 of my "Post Trial Brief": At trial it has been proven that the other Asian Indian Lab boss , Purnima Dixit, at the Jamaica Process Lab, openly and loudably claimed: " We Indians are Ar an, Hitler said we are the best!" And I questioned her at trial about, and I read her deposition transcript. On p. 70-71 of the deposition transcript of 12/2002, she admitted it. A46-A48

The first paragraph of p. 21 of my 'Post Trial Brief", it described that Mrs Dixit , after the December 2002 deposition on her , signed a notarized "correction",to correct the name of the Indian gentleman to whom she shouted that racial slur. A48-A49

At trial I testified about Mrs Yvonne Huang's Complaint with NYS Human Rights . A49-A50

I was not allowed to use Odorfer's deposition transcript to pin down his testimony for impeachment purpose

A50-A52

On trial transcript, it showed that Judge Sand enforced the "two sides stipulation" between the judges and defendant's attorney, although under my vehement protest.

A52-A53

Appropriate excerpts of court order of Magistrate Judge Henry B. Pitman, dated June 24, 1999, It showed that my age discrimination claim was established then already on

denials of promotions. A54-A55

About my protests to the denials of promotions of 2000 and 2001, and the US Civil Procedure 15 (b) that allows the claims are similar in nature to be on trial, my said protests are all been proven in the motion of "Plaintiff's Declaration in Support Of Her Objections To The Report And Recommendation, Dated February 17, 2004."
A56-A60

In answering my Interrogatories; complying the order of Magistrate Judge Pitman, former defendant's attorney Leonard Kaplan wrote the letter of Feb. 20, 2001 to my then attorney, in the reason of denials of promotions, he gave primarily on technical strength, some excerpts of the letter are given in this appendix . A60-A623

My Education (Master of Science from USA plus), and Chemical Professional experience of forty some years in USA, (on my resume) . A63-A69

Excerpts of my letter to Mayor Giuliani, dated March 20, 1998, which stated the certification and re-certification on the list of Promotion to Associate Chemist, by NYC Department of Personnel to NYC DEP. A67-A68

Some simple but obvious Deposition transcript excerpts on my former colleague Richard Odorfer. The deposition was conducted by my former attorney Henry Saurborn on October 12002, which attested my outstanding contributions in lab . A69-A70

Some excerpts of the deposition transcript on Mr. Trikam Patel on December 11, 2002, which confirmed my

outstanding contribution on refining the lab's method and enabled the lab to accomplish the "Track Down" project to detectPcbs in sewage samples in 1998. A70-A72

Appropriate excerpts of my Appeal Brief, p. 4, item (3), sub item (B). It was written about the letter from NYS Dep't of Labor to NYC DEP , dated 7/30/76. Which vindicated me from Kirschner's letter of 9/75. A72-A73

Excerpts of my "Post Trial Brief", on p. 3, item (4). It has been proven at trial that I am supervisor material. This item was extended to the top portion of p. 4. A73-A75

Some excerpts of my evaluations of 1999, 2000, 2001 and 2002 are typed herein to manifest that the lab supervisor bosses Sarikhani and Patel certified each of the four years so. And I specifically at trial pinned down the lab supervisor Sarikhani that he wrote those comments in my evaluations. A75-A76

Appropriate excerpts of the letter of Dr. Russell Laudon of July 18, 2002, which expressively stated that I suffered the trauma of April 2002 which caused me stress induced diabetes and toxic chemical exposure. A76-A77

Appropriate excerpts of the patient's examination history sheets. A77

Some appropriate excerpts of trial transcript, p. 200-201, of March 28, 2007, Wednesday, my medical doctor, Dr. Russell Laudon came to court to testify, he was sent away by Judge Sand. A77-A78

Some Appropriate excerpts of Osha's Rule. A78

Some appropriate excerpts from Lefrak City Special Project Laboratory Chemical Hygiene Plan (January 2001).
A78

Appropriate excerpts of letter from GHI to me, dated November 2006, which advised me of the complications of diabetes. (Eyes, heart and kidney) . A78-A79

I give the results of my last normal ECG and my first abnormal ECG. A79-A80

Excerpts of my eye doctor's letter, dated July 19, 2006, which stated that I got glaucoma and dry eye syndrome.
A80

The complete Court Orders resulted from the two conferences (March 16, 2007 and March 22, 2007) with magistrate Judge Henry B. Pitman just prior the beginning of the trial(March 26, 2007). (Only the foot notes are excluded in my typing. A80-A91

I listed instances on p. 29 of my Appeal Brief, that the defendant's attorney Rippi Gill repeatedly told black lies to object my rightful testimonies of the discrimination events, I tried to tell Judge Sand that those objections were false, those issues were never precluded by Judge Pitman earlier. But Judge Sand scolded me to sustain the false and illegal objections. Those are just some additional examples of extreme abuse of discretion by Judge Sand.(And the trail transcript is quoted by pages and lines.) A91-A95

Appropriate excerpts of Plaintiff's Proposed Pretrial Order, in which I listed the names of chemists of the Bureau who filed Complaint with NYS Human Rights in close time

interval with my case.) A95-A96

Specifically I put the appropriate excerpts of the NYS Human Rights Complaint by Chemist Julianito Moraleda, whose complaint had similarities with what I have suffered. A96-A101

Some excerpts of trial transcript, which showed that I tried to present that Exhibit 12 of my Proposed Trial Order, so that I could show that the Asian Indian Lab bosses Trikam Patel and Purnima Dixit are racist, but J8dge Sand scolded me and forbade me to talk about those things. A101-A103

The defendant's attorney Rippi Gill claimed that those aforementioned complaints were unduly prejudicial, that they were individuals not being called there, and they (the defendant's attorneys) should have the opportunity to cross examine those individuals, otherwise, under 403, would be unduly prejudicial. A101-A102

My protest now: When defendant's attorney using Kirschner's letter of 1975, more than 30 years ago, and I did not have opportunity to cross examine Kirschner, Why it was not prejudicial ? And that letter of more than 30 years ago, was excepted and used to condemn my characteristics by Judge Sand in his Opinion. 9That letter was accepted as defendant's evidence against me), That letter of more than 30 years ago, was not even notarized or sworn under penalty of perjury. The afore mentioned complaints of Bureau Chemists with NYS Human Rights were recent years, and all were under Oath and notarized. Judge Sand would not allow me to speak up , he always stood together with defendant's attorney, I was depressed of opportunity of presentation

and defense. Judge Sand surely abused discretion to the extremity. **A101-A102**

07-3155-cv
Hou v. NYC Environmental

UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

SUMMARY ORDER

RULINGS BY SUMMARY ORDER DO NOT HAVE PRECEDENTIAL EFFECT. CITATION TO SUMMARY ORDERS FILED AFTER JANUARY 1, 2007, IS PERMITTED AND IS GOVERNED BY THIS COURT'S LOCAL RULE 32.1 AND FEDERAL RULE OF APPELLATE PROCEDURE 32.1. IN A BRIEF OR OTHER PAPER IN WHICH A LITIGANT CITES A SUMMARY ORDER, IN EACH PARAGRAPH IN WHICH A CITATION APPEARS, AT LEAST ONE CITATION MUST EITHER BE TO THE FEDERAL APPENDIX OR BE ACCOMPANIED BY THE NOTATION: (SUMMARY ORDER). A PARTY CITING A SUMMARY ORDER MUST SERVE A COPY OF THAT SUMMARY ORDER TOGETHER WITH THE PAPERIN WHICH THE SUMMARY ORDER IS CITED ON ANY PARTY NOT REPRESENTED BY COUNSEL UNLESS THR SUMMARY ORDER IS AVAILABLE IN AN ELECTRONIC DATABASE WHICH IS PUBLICLY ACCESSIBLE WITHOUT PAYMENT OF FEE (SUCH AS THE DATA BASE AVAILABLE AT HTTP://WWW.CA2.USCOURTS.GOV/). IF NO COPY IS SERVED BY REASON OF THE AVAILABLITY OF THE ORDER ON SUCH A DATABASE, THE CITATION MUST INCLUDE REFERENCE TO THAT DATABASE AND THE DOCKET NUMBER OF THE CASE IN WHICH THE ORDER WAS ENTERED.

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Daniel Patrick Moynihan United States Courthouse, 500 Pearl Street, in the City of New York, on the 9 th day of April, two thousand nine.

Present:

Hon. John M. Walker, Jr.,
Hon. Pierre N. Leval,
Hon. Peter W. Hall,
Circuit Judges.

Ming Yen Hou,
Plaintiff-Appellant.

-v.- 07-3155-cv

New York City Department of Environmental Protection,
Defendant-Appellee.

For Plaintiff-Appellant: Ming Yen Hou, pro se, Rockaway Park, NY.

For Defendant-Appellee: Ann E. Scherzer, Assistant Corporation Counsel of the City of New York (Michael A. Cardozo, Corporation Counsel), New York, NY

.Issued as Mandate: May 7 2009.

UPON DUE CONSIDERATION of this appeal from a judgment entered in the United States District Court for the Southern District of New York (Sand, J.), it is hereby

ORDERED, ADJUDGED AND DECREED that the judgment of the district court is AFFIRMED.

Plaintiff-Appellant Ming Yen Hou, pro se, appeals from the July 2, 2007, judgment in favor of Defendant-Appellee, the New York City Department of Environmental Protection ("DEP"), entered in the United States District Court for the Southern District of New York (Sand, J.), following a grant of partial summary judgment and a subsequent bench trialon the issues that remained. See Ming Yen Hou v. N. Y. City Dep't of Envtl. Prot., No. 98 Civ 1518 (LBS), 2007 WLn 1771609(S.D.N.Y.June 19, 2007). We assume the parties' familiarity with the underlying facts and procedural history of the case, as well as with the issues presented on appeal.

We review the district court's partial grant of summary judgment de novo, construing the evidence in the light most favorable to the non-moving party. See Tenenbaum v. Williams, 193 F. 3d 581, 593 (2d Cir.1999). Summary judgment is appropriate where "there is no genuine issue as to any material fact and …the movant is entitled to judgment as a matter of law," Fed. R. Civ. P. 56 ©, i.e., "(w)here the Record taken as a whole could not lead a rational trier of fact to find for the non-moving party, "Matsushita Elec. Indus. Co. V. Zenith Radio Corp., 475 U. S. 574, 587 (1986). Following review we conclude that the district court properly granted summary judgment in favor of DEP on Hou's age discrimination claim, her Title VII claims occurring before January 10, 1997, and her claims involving denials of promotions in 2000and 2001.

On appeal from a judgment entered following a bench trial, we review the district court's findings of fact for clear error and its conclusions of law de novo. Grace v. Corbis-Sygma, 487F.3D 113, 118 (2D Cir. 2007). In entering

judgment for the defendant, the district court found that plaintiff's "allegations of racial or ethnic discrimination (were) not supported by any evidence whatsoever. "Ming Yen Hou, 2007 WL 1771609, at*1. And despite giving her "broad latitude' due to her pro se status, id., the court determined that plaintiff had "woefully failed to present any evidence in support of her claims of discrimination or retaliation", id. At *2.

In her brief, Hou argued that the district court was "miserably ' or "terribly wrong in its conclusions that she Suffered no discrimination or retaliation based on race or national origin; she challenges the district court's findings in favor of DEP as clearly erroneous and not supported by the weight of the evidence. Upon review of the records we find no error in the district court's findings. Hou offered no evidence at trial to support her conclusory allegations that her supervisors were racist or that she suffered from disparate treatment due to her Chinese heritage.

The district court also did not err in entering judgment for the defendant as to Hou's failure to promote claim. In order to make out a prima facie case of discrimination in violation of Title VII, a plaintiff must show that : (1). She is a member of protected class; (2) she performed the job satisfactorily; (3)an adverse employment action took place; and (4) the action occurred under circumstances giving rise to an inference of discrimination. See McDonnell Douglas Corp. v. Green, 411 U. S. 792, 802 (1973). Once a plaintiff alleges a prima facie case of discrimination, the bunden of productions shifts to the employer to demonstrate a legitimate , non discriminatory reason for the adverse employment decision. See McDonnell Douglas, 411 U.S. at 804-05.

A review of the record demonstratrates that, with respect to Hou's delayed promotion claim, the district court did not clearly err in finding that DEP followed its "pool date", which is when Hou was interviewed and selected for promotion. The court also did not err in finding that her racial or ethnic discrimination allegations with respect to the promotion claim were were not supported by the evidence, which showed that Hou was considered difficult to work with and had communication problems through out her t4enure at DEP.

Finally, Hou challenges the district court's evidentiary rulings. We "review evidentiary rulings for abuse of the district court's broad discretion, reversing only when the court has 'acted arbitrarily or irrationally". United States v. Nektalov, 461 F. 3d 309, 318 (2d Cir. 2006)(citation omitted). Here , the district court did not abuse its discretion. With respect to the medical doctor's testimony, Hou sought to have him testify about injuries she sufferedin 2002 for which she filed a worker's compensation claim; however, her discrimination lawsuit primarily involved alleged discriminatory acts occurring prior to the filing of her Complaint in 1998. Moreover, the court did not abuse its discretion in ruling that, because Hou's technical proficiency was not at issue, Hou could not call an expert to testify about her proficiency. Withrespect to the deposition of Jian Qi, who had become unavailable as a witness after moving to China, the court did not abuse its discretion in not allowing the deposition testimony to be read at trial. DEP did not attend the deposition, and therefore, had no opportunity to cross-examine him. In fact, there was no evidence that DEP had ever been notified of that deposition, and Hou's former counsel, who was asked by the court for proof of a deposition notice, was unable to produce anaffidavit of service. A further review of the record demonstrates that the

court also did not abuse its discretion with respect to Hou's remaining evidentiary challenges.

To the extent Hou's appellate brief suggests a judicial bias, Hou has provided no evidence to support this claim and none appears in the record. Adverse "judicial rulings alone almost never constitute a valid basis for a bias or partiality motion." Liteky v. United States, 510 U. S. 540,555(1994). Additionally, Hou's argument that DEP's application for fees should be denied is also without merit as the district court did deny the application"without prejudice to renewal after entry of a final judgment."

We have considered Hou's remaining arguments and find them to be without merit. For the foregoing reasons, we AFFIRM the judgment of the district court.

For the Court:
Catherine O'Hagan Wolfe, Clerk

By _Frank Perez

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----------x

Ming Yen Hou

Plaintiff, 98 Civ. 1518 (LBS)

-against- JUDGMENT

New York City Department Of
Environmental Protection,

Defendant.

----------x

A non-jury trial before the Honorable Leonard B. Sand United State District Judge, having begun on April 2, 2007 and at the conclusion of the trial the Court having found plaintiff has woefully failed to present any evidence in support of her claims, and thus , has found in favor of the defendant dismissing the action, it is,

ORDERED, ADJUDGED AND DECREED; That the defendants have judgment in their favor; accordingly, the case is dismissed.

Dated: New York, New York
June 22, 2007

So Ordered:

Leonard B. Sand
U.S.D.J.

J. MICHAEL McMAHON

Clerk of Court
By: (Illegible)

Deputy Clerk

The following is a short excerpt of "Plaintiff's Notice Of Appeal", in case if I will allowed to write "Brief On Merits", Then there will be my complete "Notice Of Appeal" in the Appendix which was submitted to US Court Of Appeals for The Second Circuit.

In this Excerpt, I will just type part of item (10)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----------x

Ming Yen Hou

Plaintiff,

-against-

New York City Department Of Environmental Protection

Plaintiff's Notice Of Appeal

98 Civ. 1518 (LBS)(HBP)

Defendant.

----------x

(10). I also appeal in case if there will be a new trial, court of appeals will make sure that all the above wrongful dismissing and preclusion on my part will be firmly reversed and ordered not to be dismissed or precluded. I also will be allowed to start from the beginning that I will not waive my right for a jury trial, (at that pretrial conference of the wrongful trial, I trusted those judges and waived my right of a jury trial, but if there will be a new trial, I would want to start the trial matter all over, I WOULD WANT A JURY TRIAL.).

Dated: July 13, 2007 Ming Yen Hou

_____

Ms Ming Yen Hou, Plaintiff
Pro Se
177 Beach 114 Street,
Rockaway Park, N.Y.
11694.. Tel # (718)634-1643.

Queens, N.Y.

APPROPRITE EXCERPTS OF THE 60 PAGES OF MAGISTRATE JUDGE HENRY B. PITMAN'S REPORT AND RECOMMENDATION, DATED FEBRUARY 17, 2004..

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----------x

Ming Yen Hou,

Plaintiff,

-against-

New York City Department Of Environmental protection,

Defendant.

----------x

98 Civ. 1518

Report And Recommendation

(p. 7, Second paragraph of the R. R. :)

Second, defendant argues that plaintiff's claim involving denials of promotion in 2000 and 2001 is mentioned for the first time in her Memorandum of law in Opposition to Summary Judgment (Def. Memo. Of Law at 7). There is no mention of these promotions in plaintiff's complaint, and plaintiff has not made a motion to amend her complaint to include these claims. While I appreciate that Rule 15 of the Federal Rules of Civil Procedure provides for liberal amendment of complaints, there must be at least some notice to the opposing party; a complaint cannot be a moving target. BULL v. Waupun Corr. Inst., 97 Civ. 192C, 2000WL34229998 at *3 (W.D. Wis. Sept. 14, 2000). Accordingly, these claims are not promoted in 2000 and 2001 as a result of an illegally delayed 1997 promotion to Associate Chemist, events occurring in 2000 and 2001 may be relevant to damages. They are not, however, properly before the Court as separate and distinct discriminatory acts.

(on p. 43 of the R.R.)

i. Claims Based On
Age Discrimination

Defendant argues that plaintiff has failed to provide Any evidence that she was treatment unfavorably because of her age (Def. Memo. Of Law at 12). Plaintiff's sole argument with respect to age appears to be that she was forced to perform inventory despite her age (Hou Depo. At 588-89). As defendant correctly points out, plaintiff's real claim here is not that plaintiff was treated differently because of her age, but rather, that defendant failed to treat her preferentially because of her age (Def. Memo. Of Law at 12).

(On p. 56 of the R. R. :)

iii Retaliation Claim

(On p. 57 of the R.R. paragraphs 1 ; 2 ; 3, and p. 58, paragraph 1 :)

Here, many of the adverse employment actions plaintiff alleges occurred following a complaint of some kind by the plaintiff. For examples, plaintiff filed a complaint with the DEP EEO office in July 1994. Later that month in July 1994, she allegedly was denied the opportunity to train with the lab's new equipment; adversely affecting her potential for promotion (Hou Decl., # 29).

On November 6, plaintiff filed her complaint with the EEOC (Hou Decl., # 18). Later that month , plaintiff was allegedly assigned to type reports concerning data from test results; a task previously performed by a student intern (Hou Decl., # 24). Later that same month, plaintiff also alleges that she assigned to the menial task of preparing samples, but was denied the opportunity to "run" samples, which involves the use of the lab's sophisticated equipment.(Hou Decl., #25).

Plaintiff filed her complaint in federal court on March 2, 1998. Later that same month, Sarikhani issued plaintiff a warning memorandum, and thereafter, a quarterly evaluation dated May 28, 1998, which rated her performance as "conditional" (Hou Decl., # 26). These poor evaluations eventually led to DEP's Chief of Personnel warning plaintiff that she would bedemoted if her performance did not improve.(Hou Decl., # 26).

Accordingly, plaintiff has shown sufficient temporal proximity between protected activities, such as filing complaints , and adverse employment actions to establish a prima facie case of retaliation. Because defendant moves for summary judgment on the sole ground that plaintiff has failed to establish a prima facie case., this aspect of defendant's motion should be denied.

(P. 58 of R.R., second paragraph, and p. 59 top portion.:)

IV. Conclusion

Accordingly, for all the foregoing reasons, I respectfully recommend that defendant's motion for summary judgment be granted in part and denied in part. Defendant's motion for summary judgment dismissing (1). All claims under the ADEA; (2). All claims under Title VII occurring prior to January 10, 1997; (3) all claims under state and city law occurring prior to November 6, 1994, and (4). Claims involving denials of promotions in 2000 and 2001, should be granted. In all other respects, defendant's motion for summary judgment should be denied.

(P. 60 of the R.R., the date; signature; and copies mailed t parties.☺

Dated: New York, New York.
February 17, 2004.

Respectfully submitted,

Henry Pitman

Henry Pitman
United States
Magistrate Judge

(THE COVER PAGE OF DEFENDANT'S MEMORANNDUM OF LAW IN REPLY TO PLAINTIFF'S OPPOSITION, AND IN FURTHER SUPPORT OF DEFENDANT'S MOTION FOR SUMMARY JUDGMENT :)

Docket No. 98 Civ. 1518 (LBS)(HBP)

UNITED STATED\S DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

Ming Yen Hou,

Plaintiff,

-against-

New York City Department Of Environmental Protection,

Defendant.

MEMORANDUM OF LAW IN REPLY TO PLAINTIFF'S OPPOSITION, AND IN FURTHER SUPPORT OF

DEFENDANT'S MOTION FOR SUMMARY JUDGMENT

Michael A. Cardozo
Corporation Counsel of the City of New York
Attorney for Defendant
1oo Church Street, Rm 2-117
New York, N.Y. 10007
Of Counsel: Neil S. Rosolinsky
Tel" (212) 788-0956
NYCLIS No. 98GL000146
Mario Frangiose,
Neil S. Rosolinsky,
Of Counsel.8

(LEGAL NEWS ON DISCRIMINATION; SEX DISCRIMINATION:
HTTP://HR.BLR.COM/DISPLAY.CFM/ID/18626)

NEWS
6/23/2006
SUPREME COURT EXPANDED SCOPE OF ANTI-RETALIATION LAW

The Supreme Court has ruled that an employer's actions constitute unlawful retaliation if they would have dissuaded a reasonable worker from making or supporting a charge of discrimination.
The court also said thescope of anti-retaliation law extends beyond workplace –related or employment –related acts, giving the example of an employer that filed false criminal charges against a former employee who complained about discrimination.

The ruling came in a case in which Sheila White argued Burlington Northern Santa Fe Corp violated federal law by

transferring her from a forklift operator to standard track laborer after she complained about harassment. She said the Laborer position was "dirtier,' more demanding physically, and considered a worse job than the forklift operator position.

She argued that the company also unlawfully retaliated against her by suspending her 37 days without pay for what the company called insubordination after a workplace incident. The company eventually reinstated her and gave her back pay, saying it had cleared her of the insubordination charge.

Appeals courts have taken different views of what employer actions constitute unlawful retaliation. In its ruling, the Supreme Court adopted a standard for determining whether an employer 's actions violate the anti-retaliation provision of Title VII of the Civil Rights Act, which forbids an employer from discriminating against an employee or job applicant because that individual opposed any practice made unlawful by Titlt VII.

"We agree with the formulation set forth by the Seventh and the District of Columbia Circuits," the court wrote . "In our view , a plaintiff must show that a reasonable employee would have found the challenged action materially adverse, which in this extent means it well might have dissuaded a reasonable worker from making or supporting a charge of discrimination."

The court then applied the standard to the case before it.

"Applying the standard to the facts of this case, there was a sufficient evidentiary basis to support the jury's verdict on White's retaliation claim. Contrary to Burlington's claim, a reassignment of duties can constitute retaliatory

discrimination where both the former and present duties fall within the same job description. Here, the jury had considerable evidence that the track laborer duties were more arduous and dirtier than the forklift operator position, and that the latter position was considered a better job by male employees who resented White for occupying it. Based on this record, a jury could reasonably conclude that the reassignment would have been materially adverse to a reasonable employee."

(US SUPREME COURT'S DECISION ON A CASE OF "RETALIATION", SOME SIGNIFICANT EXCERPTS OF THE DECISION AS PUBLISHED IN "case Law", http://caselaw.lp.findlaw.com/cgi-bin/getcase.pl?court=US&navby=case&vol=000&invol=05-259):
(p. 1, the case Title and the second and third paragraphs):

SANTA FE RAILWAY
COMPANY, PETITIONER V. SHEILA
White

On writ of certiorari to the united states courts of
Appeals for the sixth circuit

(June 22, 2006)

Justice Breyer delivered delivered the opinion of the court.

The Courts of Appeals have come to different conclusions about the scope of the Act's anti-retaliation provision, particularly the reach of its phrase "discriminate

against." Does that provision confine actionable retaliation to activity that affects the terms and conditions of employment? And how harmful must the adverse actions be to fall within its scope?

We conclude that the anti-retaliation provision does not confine the actions and harms it forbids to those that are related to employment or occur at the workplace. We also conclude that the provision covers those (and only those) employer actions that would have been materially adverse to a reasonable employee or job applicant. In the present context that means that the employer's actions must be harmful to the point that they could well dissuade a reasonable worker from making or supporting a charge of discrimination.

(P. 2, SECTION B, PARAGHAPH 2.):

initially, a divided Sixth Circuit panel reversed the judgment and found in Burlington's favpr on the retaliation claims. 310 F.3d 443 (2002). The full Court of Appeals vacated the panal's decision., however, and heard the matter en banc. The court then affirmed the District Court's judgment in White's favor on both retaliation claims. While all members of the en banc court voted to uphold the District Court's judgment, they differed as to the proper standard to apply. Compare 364F. 3d, at 795-800, with id., at 809(Clay, J., concurring).

(P. 10 OF 14, THE CONCLUSION OF SECTION IV.):

FOR THESE REASONS, THE JUDGMENT OF THE COURT OF APPEALS IS AFFIRMED.

(Some Excerpts of Trial transcript on April 2, 2007, I specifically testified about "Retaliation.")

On p. 460 of the trial transcript, line 18-25, " Ms Hou: .... Line 22-25: Okay, then we talk about retaliation, the three memos right after my filing EEOC complaint and the law suit complaint. Before that, they never gave me any memo as---as I swear again. "

Continued on p. 461, line 1 to line 8, : " Second, assigned me to unreasonably dangerous work, and using a defective fume hood to dispose hundreds of thousands of ampules of volatile organic compounds, violated Osha laws. That was not only discrimination, was—**was retaliation**, because they were mad at me. And . they firmly would not let me learn Maintenance and trouble shooting the instruments. I asked , repeatedly asked, They just would n't let me to.

Continued on p. 461, line 9-15: "And they ---the number 4 , retaliation. They set up by plan at the Empore disk extraction. The plan was made in February of 1998. When

they learned that I was going to file law suit complaint, I was told by their close one , Lantis Osemwengie in February of 1998. I asked Lantis to make a written statement, he wouldn't because he belonged to other side. " On p. 461, line 17-19: Ms Hou: "Yeah, but this is not about discrimination, this is retaliation after deposition in December of 2002, in deposition of December of 2002.
On line 23 of p. 461: Ms Hou: " I 'm referring to we deposed Trikam Patel. Line 25, Ms Hou: "And, Ghorban Sarikhani, the lab bosses.

Continued on p. 462, line , Ms Hou: In December of 2002.
Line 4-7: Ms Hou: " During that deposition, we addressed heavily not allowing me to maintain and troubleshoot my instruments. Then they made me to sign my sample logbook in March of 2003. Actually--,
Line 8-10: Ms Gill: Objection, your honor. This issue has been dealt with Judge Pitman. Anything post December 31, 2002 is not an issue in the case, and is not to be discussed.
Line 11, The Court: "Sustained."
THE ATTENTION OF US SUPREME COURT IS CALLED BY THE PETITIONER: THIS IS ANOTHER OBJECTION OF DEFENDANT'S ATTORNEY, THAT WAS IMMEDIATELY SUSTAINTED BY JUDGE SAND. I WAS TESTIFYING ABOUT **RETALIATION.**
THE FACT IS THAT IN MARCH OF 2003, THEY TRIED TO MAKE ME SIGN SAMPLE LOGBOOK AND THE MAINTENANCE BOOK OF THE INSTRUMENTS, WHICH WAS SIGNED BY THE OTHER ASSOCIATE CHEMIST, EFREN GANCENA, AND INITIALED BY HIM, BECAUSE I WAS NOT ALLOWED TO DO THE MAINTENANCE AND TROUBLE SHOOTING OF THE INSTRUMENTS I USED. BUT FINALLY THEY MADE ME TO SIGN STATEMENT THAT I WAS ALLOWED TO DO ALL THE MAINTENANCE AND TROUBLE SHOOTINGS OF MY INSTRUMENTS, I WAS FEAR

THAT THEY WOULD CHARGE ME "INSUBORDINATION," SO I HAD TO SIGN QUICKLY. BUT I FELT AWFUL, SO THE SAME NIGHT I WROTE LETTER TO THEN COMMISSIONER TO DENY IT, I DECLARED THAT I SIGNED UNDER DURESS, I WOULD IMMEDIATELY DECLARE IT VOID. BUT I KNEW THAT THEY WOULD TRY IT AGAIN AND AGAIN, I COULD NOT SLEEP AT ALL, SO I THROW IN PAPER TO RETIRE IMMEDIATELY. **THAT WAS RETALIATION ACT, (MY PROTEST NOW: RETALIATION PROVISION SHOULD NOT BE CUT OFF AT END OF DISCOVERY.)JUDGE SAND ALWAYS WOULD NOT ALLOW ME TO SAY ANYTHING WHEN THE DEFENDANT'S ATTORNEY FALSEFIED MATERIAL FACT TO "OBJECT", IN MY APPEAL BRIEF P. 29, THE ITEMS CITED, JUDGE PITMAN'S ORDERS OF MARCH 16 AND MARCH 23, 2007 BOFORE THE TRIAL, (march 26 to April 2, 2007) certainly did not have the things quoted by the defendant's attorney.**

Another thing I HAVE TO POINT OUT TO THE US SUPREME COURT: I SPEAK WITH ACCENT, JUDGE SAND ONLY GAVE ME THREE HOURS TO TESTIFY, I HAD TO SPEAK VERY QUICKLY, SO THAT THERE WERE A LOT OF ERRORS IN THOSE REPORTER'S TYPING, THEREFORE I HAD TO CORRECT THE ERRORS WHEN CITE THE TRANSCRIPT, SO THAT IT WOULD BE UNDERSTANDABLE, BUT THE MEANINGS WERE KEPT.

Continued on p. 462, line 11-23: Ms Hou: " Well, that actually was from 2002. Okay, number 6 retaliation. They Made a false accusation on me. That is retaliation for my discrimination claims. The transaction in Exhibit 29 is entered because this is false accusations that made me feel really bad. I can't wash myself out of it. No, I would do that.

I don't think they would do that if I didn't file the law suit complaint. Because I charged them discrimination, they want To charge me of saying racial slur.
Number 7, they gave me much less seniority sometime after the lawsuit commenced. It is in Exhibit 58,. Let me enter –I enter exhibit 58, part 1.

Continued on p. 464, line 7-14: Ms Hou: " My seniority at the time of promotions. Others got promotion. So my seniority was reduced to so low, and I gave in the papers, you see, I was transferred employee, because transit authority had financial reason to lay off, I was transferred. All those personnel papers I didn't get, the city gave me when I started law suit, sent me my personnel file, it was in there. Also I have evaluation. Line 14, "Let put , I enter Exhibit 58, part 6."
Line 16-17: Ms Hou: " Evaluation when I first came back to the DEP, it was March 16, '87.
Line 21-23: Ms Hou: " To March 16, '88. So in the evaluation, it says date appointed probationary position, supervisor wrote : None. Because transferred employee don't have probation.
Line 25 continued to line 4 of p. 465: Ms Hou: "That means my seniority was continued . But DEP insisted to cut my seniority from the time I came back in March 16, '87, just started at that time. That's not right. That makes it looks bad on me, that I can not compete with anybody in promotion. Actually I got seniority 100.

Continued on p. 466, line 5-21: Ms Hou: "DEP does not have any right, any jurisdiction to do anything about me in seniority, because if I would take promotional exam. It would be Department of Personnel, they decide. I enter, just a minute, enter my result, notice of result where Department of Personnel , that exam. Was taken in 1993, promotional

exam., and written exam. 1993; April 1994, oral exam., for associate chemist, only got established May 7, 1997

They gave me 100 for seniority. I JUST CAME BACK TO dep IN 1987. So I took promotion Exam. In 1994, 6, 7, years later, they gave me 100, I know it takes 15 years to get 100, I been with the City so many years, I know those thing. So they just gave me like that. Before they gave me certificate of 25 years of service in 1998, and in 1993 they gave me 20 years of service, So sometime after the law suit , personnel of the DEP in the central part, they became like that. So that means with DEP , I don't have privilege.

Continued on 467, line 3-4: Ms Hou: "When they make provisional promotion, they should consider seniority , too. Because provisional.
Line 7-8: Ms Hou: " If you are low in seniority, some promotion, you may not get it."

Line 18: Ms Hou: "They tried to justify not to promote me.

Line 21-25 of p. 467, and continued to line 1 of p. 468:

Ms Hou: "Promotional Exam is given by Department of Personnel, not by any agency. So DEP only can give provisional promotion. They are trying to justify that, why I didn't get the provisional promotion. That is what they try to do, try to justify, Because any promotion should consider seniority, because for permanent position , seniority is 15 percent.

Continued on p. 468, line 19-20: Ms Hou: "Yes , your honor, it is for happiness, for pride, for honor.

Some excerpts of trial transcript to show that my medical doctor came to court on the morning of March 28, 2007, (although in Magistrate Judge's Order of March 23, 2007, item 8. "Defendant's application to limit Dr. Laudon's testimony is denied without prejudice to whatever objections may be appropriate based on the testimony adduced at trial.')

On. P. 200, line 21-25, ans continued to p. 201, line 1-5.

Mr. Madden: We need some clarification. I believe this gentleman is Ms Hou's doctor. On the first day Of this trial your honor very clearly precluded his testimony. Plaintiff is flagrantly violating this court's rules. Defendant object to his testimony and we ask he be removed from the court. (**My explanation now: Judge Pitman originally permitted the testimony of Dr. Laudon, only on Monday [March 26, 2007,] Judge Sand removed Dr. Laudon from the list of witness. I phoned Dr. Laudon's office on**

Monday night about it, but he still came to court on Wed., he said that he was subpoenaed, so he came.)
The Court: "I ruled on it once , you may not testify. You are excused.

Dr. Laudon: " You are officially saying I am excused.

The Court: "Yes."

SOME EXCERPS OF MY "POST TRIAL BRIEF" AS EXAMPLES OF CONTINUOUS RETALIATION:

(On p. 7 of my "Post Trial Brief", first paragraph:)

Mr. Trikam Patel put me on a non working machine about six months, to try on PAH analysis, Polynuclear Aromatic Hydrocarbons, p. 192, on p. 193, line 14-16, the court : The machine that Ms Hou was assigned to, were the results of that, were they recorded, was any thing done with them. Line 17, the witness: Not to my recollection. No, No. Line 18, the court: So that was just a waste what she was

doing. Line 24, The Court: So the results were kept. Line 25, the witness: The results were not kept, it was just experimental work, setting up the instruments and try it out. P. 194, line 2, The Court: How long a period of time was she assigned to this machine, line 4-6, the witness; I believe this was for about 3,4 months... line 11-12, Q: Was it from beginning of 1995 to June of 1995, I was doing that PAH by the useless instrument ?
(My remainder now: I did file an internal discrimination complaint with DEP EEO office in 1994.)

(On p. 8 of my "Post Trial Brief", paragraph 1 and paragraph 2; all page of p. 9 and extended to the top portion of p. 10. :)

B. Ghorban Sarikhani discriminated against me in assigning me to only prepare samples of standards of PCBs By Empore Disk Extraction method, but had both of the operators of the Pcbs/Pesticides, namely Lantis Osemwengie and Boris Sheynker to prepare standard samples to compare with me. Lantis Osemweingie in March of 1998, ... Then in May of 1998, Sarikhani put me to prepare PCBs standard samples by Empore Disk Extraction method again, this time to compare results with the other operator of Pcbs/Pesticides machine , Boris Sheynker. Please note that I was never allowed to touch those machines in the analysis of Pcba/Pesticides analysis, I had no control of the running and calibration of the chromatograms. But in the secons time of comparison, I became more cautious, made copies of the runs and took them home, and I made copies of the extraction sheets and took them home. That why I could enter plaintiff's exhibits 10,11,12 on 3/26/07 as evidence. Those evidence including the extraction sheets of Boris Sheynker and mine. And the chromatograms of the runs by Boris on my preparations and Boris' preparations. Please see the trail transcript, p. 138, line 5-6, I asked Patel about Exh.

38, part 11, which is a written statement of Richard Odorfer, he also testified about that. This Exh. 38, part 11, was entered with Exh. 38, part 10 on on p. 129. I asked about Lantis Osemwengie , on line 19-24. A.: (By Trikam Patel), The answer is yes. He and Boris Sheynker who testified yesterday analyzed the sample on the instrument. He also partici[illegible]ated in the sample preparation. ...By the Examination on Boris Sheynker on Monday, March 26, 2007, he admitted that my concentration for extraction was only one tenth of the concentration for extraction of his, how can those two results be compared? And now we have the bundle of Exh. 10,11,12, which was entered as evidence, we can also see that the final volume of the extract of MYH, in exhibit 10, was 2 ml (cc) . And in Boris' extraction sheet, Exh. 11, his final volume of the extract was 1 ml (cc), that makes the run concentration of Boris' as 20 times more concentrated than that of mine. How could those two results be compared? Sarikhani admitted that he ordered on the concentrations. He claimed that he ordered every thing the same, lies.

C. Sarikhani gave me bad evaluations for my two quarterly evaluations when I was going through my probation for my civil service promotion: Exh. 36, part 1, entered on p. 393 as evidence, he gave me all tasks as "un-ratable" except one, that was because he would not assign me to the tasks of Associate Chemist I, he only assigned me to the work of student Intern and WEP (work employment program for Public assistance recipients) person, such as filling the spread sheets and put in the data of assistant chemists, Exh. 36, part 1A, is an example of the data that I was assigned to fill in (type in) by computer. That Quarterly evaluation was from 11/24/97 to 02/23/98. After that un-ratable rating, I received a letter from the Personnel Chief of the Bureau, Oscar Medina to warn me that I was to be demoted to my former title of "Assistant Chemist" if I could

not improve my performance. That was the attack carried out as Discrimination and Retaliation because I was Chinese and I filed Charges with E.E. O. C. in Nov. of 1997; and the federal government E.E.O. C. notified NYC DEP in December of 1997 that I was to file law suit with US District Court, the E.E.O.C. was getting "Letter of Right To Sue" for me. The promotion from civil service list was resulted by my three letters to then Mayor Giuliani, the lab bosses would never voluntarily promote me.

The second quarterly evaluation, from 2/24/98 to 5/23/98, Sarikhani gave a" conditional" rating for the task of Empore Disk Extraction, The Exh. 36, part 3 was entered as evidence on p. 397. This Empore Disk Extraction , as described in the above paragraph B, I was set up with one tenth of the concentration of the comparing person Boris Sheynker, and the final volume of my extract was two times of that of the comparing person, therefore the run concentration of Boris Sheynker was 20 times more concentrated than that of mine. The first time of comparison was with Lantis Osemwengie in March of 1998, Lantis changed to a fabricated calibration curve to make his results look good, the original printed out of my results were good by the original calibration curve , then they stole my computer print out given by Lantis, so I wrote letter to the Division Fred Sachs and sent Mayor a copy. Those all were the carried out plot of Trikam Patel and Sarikhani, in their plot they got Lantis Osemwengie to do it with them, Lantis confessed it to me in Feb. of '98, Lantis also told Richard Odorfer about it, that 's why Richard Odorfer wrote that that statement on Feb. 24, 1998, it was entered on p. 138, together with Exh. 38, part 10, which was entered on p. 129, what they did to me was darker than "Water Gate" event, only no one is interested to straighten it out except me, because only I was the victim.

D. Sarikhani gave me three made up filthy memos, dated January 16, 1998; entered as Exh. 43, part 32A as evidence with my rebuttal on p. 357; and copies of post office return receips as Exh. 43, part 32B on p. 359 as evidence. Second Memo was dated March 30, 1998, entered as Exh. 43, part 34A-1 with my rebuttal on p. 361; and copy of the postal return receipt was entered as exh. 43, part 34A-2 on p. 361. And the third made up memo dated Oct. 8, 1998, it was entered with mt rebuttal as Exh. 43, part 36 A with mt rebuttals on p. 363, thr return receipts was entered as Exh. 43, parts 36 c, 36 D and 36 E. The reason that I put the postal return receipts with those documents was , Sarikhani would not admit the fact that he received my rebuttals, all my rebuttals were sent to Sarikhani by certified mail, return receipt requested, I also sent copies to higher ups by certified mail, return receipts requested. I never sent Sarikhani any certified letter other than my rebuttals to his made up memos. When Sarikhani would not admit that he received my rebuttals, I went great length to look for the return receipts, I found enough of them, therefore I put those together to prove that he did receive my rebuttals.

(My Note now to remind Supreme Court: My law suit was filed on March 2, 1998.)

E. Mr. Sarikhani, by discrimination because I am Chinese from China, and because of the Retaliation because I filed law suit complaint on Discriminations, he maliciously assigned me to dispose huge quantity of ampules of thousands and dozens of bottles of volatile organic compounds by the defective fume hood, and in violation of Osha Laws, with the intent to injure me. Please see Exh. 26, entered as evidence on p. 404, (All my exhibits are evidence without objection, see p. 208 of trial transcript). It is a multiple pages of document, compiled by me. Please see

Exh. 26, part 1, item H, p. 1, that was the fume hood I was assigned to do the exceptional huge quantity of volatile organic compounds, on the day of injury, the technician from contractor "Professional Environmental" came to measure the flow of all the fume hood, I already moved to another fume hood, he measured my used fume hood, # 14, he said that he still smell the chemical odor. The measurement was 31/66, that means when the hood was completely open, the flow was 31 ft per min., when the hood was half open, the flow waas merely 66 ft/min. Please see Exh. 26, part 2, item O, that is Osha Rules, in the Appendix of Lefrak City Special Projects Laboratory Chemical Hygiene Plan, in the fifth small paragraph, it stated: "Hoods should not be used as a means of disposal for volatile chemicals (40, 200). And Please see Exh. 26, part 2, p. 18, that is p. 18 of the Hygiene Plan, see the section , 7.03 Local Exhaust Ventilation, the fifth small paragraph, it stated: " ....The duct velocity shall be maintained at 100 ft per min., minimum." And see Exh. 26, part 2, p.19, from the top, the fourth small paragraph, " The hood shall not be used as a means of disposal of volatile chemicals."Judge is reminded that the hood I was assigned to dispose the huge amount of of volatile organic compounds had a flow rate of 31 feet per min. whem was fully open, and 66 ft. per minute when the hood was half open, that was measured on the day I was injured. How cruel Was Patel and Sarikhani! The quantity of the am-pules and bottles of volatile organic compounds was written on Exh. 26, part 2, item V. Please note that those volatile organic compounds were very volatile, when the am-pule was breaking while pouring the content to correction bottle, there was suction above going on, a lot of the volatile organic compounds was sucked by the vacuum pump, and a lot came out of the door of the hood, so the collected volume was much smaller than the actual volume disposed. Then please see Exh. 26, part 2, items S-1 and S-2, those are my sick leave forms, I took totally 9 days sick leave for that injury. On p. 400 of the trial

transcript, line 23-25, answered by Sarikhani, he stated that there was a built in sensor, if flow drops, signal comes up alarm would go off, in addition, we had portable flow meter To use to be sure if fume hood is working. All the fume hoods had been working. That was big lies! The fact was : Since I was put back to VOCs station in June of 1999, to the time I retired and left in May of 2003, that defective hood # 14 never had working sensor, and there was only one portable flow meter in that lab, which was controlled and kept by Sarikhani. I didn't have a portable meter to use if I wanted to check at the flow of that defective hood. Now please look at the written statement of the college Intern Poala Funez on April 22, '02. She attested that lab supervisor George Sarikhani walked tous and told Ms Ming that he put the expired standard inside her hood because he wanted her to dispose them. Now please look at Exh. 26, part 1, item K, it is a daily assignment sheet, dated May 14, '02. The assignment for Chandy:" Temperature reading in the morni8ng for all refrigerators, prepare a list of the chemicals I left in your room, later I help with packing as requested."nPlease note that after Sarikhani made me to dispose the huge amount of volatile organic compounds April 9-11, 2002, he now assigned the Indian chemist Chandy to prepare a list of the chemicals he left in Chandy's room, later Sarikhani would help with the packing . Sarikhani was sending the volatile chemicals to hazardous chemical company to be disposed instead to risk Chandy to dispose those. This is evidence of discrimination because of race and national origin. (as evidence, see p. 208 of trial transcript.)

(My "Post Trial Brief", p. 10, starting the second paragraph; all page of 11 to the end of top portion of p. 12.):

(10). My former colleague Michael Golden came to testify on March 29, 2007. He never worked with me in same location, we just met at meetings, trainings, etc. And some times we talked over the phone, not frequent at all. Mr. Michael had been working at Wards Island location of Special Projects Labs. And I had been working at the Lefrak City location of Special Projects lab. When Mr. Trikam Patel was promoted to Acting Chief of Special Projects Labs in December , 1995, he offered bribe to Mr. Golden to stop talking to me. Mr. Golden did not accept Mr. Patel's bribery proposal, instead Michael Golden was reluctant that it was known that Mr. Patel discriminated against me. Patel tried to bribe him to stop talking to me apparently due to my complaint of discrimination within DEP. 9I did make complaint of discrimination with DEP EEO office in 1994). After that, Patel had his subordinate supervisors making troubles with Michael Golden, those supervisors, such as Vikram Shah and Patrick Jagessar used to have perfect relation with Michael Golden. Michael Golden's written statement was entered as Exh. 12, part 5, p. 1. Michael Golden's testimony is in p. 327-345. Trikam Patel had been very discriminating against me, he wanted every one to shun me, and he made hostile environment for me.

(11). My former colleague Richard Odorfer was supposed to testify all day Wednesday, March 28, 2007, as per proposed by def's attorney Ms Gill, it was originally schedule for the afternoon of Wed. (3/28/070 and Thursday morning by Judge Pitman's Order of 3/23/07, as special exh. , part 2, p. 1. He was only produced to testify for about 2 hours, 3/28/07, about 2-4 PM. Mr. Odorfer's testimony is recorded p. 271 to p. 317. I have had some signed written statement of Mr. Richard Odorfer, most of them were signed by my request while Odorfer witnessed what transpired in our lab, because I was under such extremely harmful treatment by the lab bosses, I knew that I would need some

eye witness' statement. All those statements were discussed and certified by Mr. Odorfer under oath at the time of plf's deposition on him in Oct. 2002. The signed statements entered as exhibits at trial are : Exh. 9, part 3, p. 1; Exh. 9, part 3, p. 3; Exh. 9, part 3, p. 4; Exh. 9, part 3, p.5; Exh. 9. part 3, p. 6; Exh. 9, part 3, p. 7; Exh. 9, part 3, p. 8; Exh. 9, part 3, item 14; Exh. 9, part 3, item 19; Exh. 9, part 3, item 20; Exh. 9, part 3, item 22. Those exhibits were entered on p. 271-276. Those written statement were given to Mr. Odorfer at trial to refresh his recollection before or during his testimony at trial. His testimony are summarized as follows: On p. 275, line 5, Q. I enter as evidence , Exhibit 9, part 3, page 7, line 6. A. : This is typed document, dated Feb. 1999, with my signature, it is describing boss Trikam Patel and Sarikhani as making hostile environment for Ming Hou. Line 11, A: I did at the request of Ming at the time to document what was transpiring in the laboratory. On p. 278, line 4, The Court: What if anything did you observe about Ms Hou's performance and her relationship to other people in the lab. Line 7-10, The witness: Ms Ming's performance, from a little lower than her, I can evaluate by saying based on the fact she reviewed my reports I submitted, she was a bench leader, and I have noticed conflicts between her and her managers. Line 15-19, The Witness: I have noticed our supervisor , Sarikhani and Patel, confront her at various occasions and one would ask her a question and she tried to answer it, then the other supervisor would stop her from talking ask her another question, it's kind of like psychologically attacking her. Line 20, The Court: What time period are we talking about, line 21-23, The Witness: Oh boy, I started in that lab 1994, and I left 2005, prior to Ming's retiring after 1994. I can't really give a specific . p. 279, line 3, Q: You started in 1994, right ? line 4, A: At Lefrak City laboratory 1994, correct. Line 5, Q: You worked with me until I retired in 2003, right? Line 6, A: Whenever you retired, correct, in the same laboratory. P. 280, line 11,

Q: Please tell me what this one is ? Line 12-13, A: It's a written letter , it's a document that's typed, dated Feb. 24, 1998, with my signature. Line 18, The witness: It describes a communication between me and another employee stating that Mr. Patel and Mr. Sarikhani are plotting against Ming Hou trying to make it look like she is not competent. Line 23, The Witness: Lantis Osemwengie . P. 281, line 15-20, The witness: some examples I said earlier where the management would confront her and take turns just making her feel very comfortable. When she tries to answer one statement, the other one would cut her off before she is finished. She tries to answer, that other manager would go on, start asking her question, cutting her off. P. 282, line 24-25, The witness: One typed document dated August 25, 1998 which I signed refers to a situation where Ming was not issued a key to the lab doors, and she was, her schedule is basically, she was the second person in the morning to arrive at the lab. If the person who was the first person didn't arrive, maybe on annual leave or sick leave, Ming would not be able to access the lab unless she contacted security who would probably open door for her. Line 10, The Witness: I wasn't supervisor, but sometimes I would be the third person to arrive, Ming, would be waiting in the lounge. P. 283, line 25, The Witness: To document what was trabspiring in the laboratory. A document dated August 27, 1998, I signed , summarizes a situation, I guess I am summarizing in this case Ming was doing paper work at her desk, I believe I walked over to say good morning , she got all nervous and said don't talk to me, George said we are not allowed to talk. When George did come in, may be that's a different document. P. 284, line 25, The Witness: There is one instance when Ming Hou had the Associate I title and another employee had the Assistant Chemist title, one title lower. Mr. Sarikhani was going be out one day or two days, and the first day he said that Ming would be in charge , second day the employee with a lower title would be in

charge. That's not-, line 6, The Court: How do you know this? Line 7, The witness: I was present. Line 16, Q: How would you say I get along with my fellow chemists in the Lab ? Line 18-22, A: When I worked with Ming, I got along with Ming, when she was my supervisor, I got along with her being my supervisor. I was not always at the spot where Ming worked with other employees. I can only attest to my relationship at the time was good. P. 287, line7, **Q: How do you think chemists, do they respect me or not ? Line 19, Ms Hou: If he testified litter different from what he testified at deposition, I can read the transcript to him. Line 22, Ms Hou: Yes, the deposition of Richard Odorfer, Oct. 1, line 25, Ms Hou: -2002, p. 43, line 21: p. 288, line 1-2 (continued by Hou), "Q. How would you say she gets along with her felloe chemists in the lab leaving aside supervisory personnel? Line 3-8 "A: A lot of chemists respect Ming in my opinion with regards especially to her ability of correcting reports, because all of us have to have our reports checked by the bench leader, and when we submitted them to Ming, she goes through them with a with a fine pick and comb. If anything was not right, or if an error occurred, down the line , Ming picks up on it." Line 9, Did you say that. Line 10, The witness : If that's what written, that's what I said, yes, sir. P. 290, line 1-3, Q: Another question, at any time during time you worked with her, has any one expressed a negative opinion about her work performance? Line 5-6, A. To my recollection, to my knowledge, I don't believe any of , any colleagues have talked negatively about her work, has any one expressed a negative opinion about her work performance. P. 28, Answer, I have witnessed occasions where Mr. Sarikhani would say things to her that were negative about her work. That's all I can think of right now. Line 25, "Q. Other than Mr. Sarikhani, you don't recall any other person? P. 291, line 2, "A: Mr. Patel also." P. 292, line 23, Q: Do you know whether or not**

there has been any other way that Ms Hou was treated differently or less favorably when it comes to training on equipment that's used in the lab. P. 293, line 7-10, The witness: I did know Ming work on the hi-tech instrumentation that we had, but there times she couldn't do repairs that needed basic maintenance, maybe other chemists were able to do that. Line 11, The court: You know that by your own observation. Line 12-13, The witness: If she asked me for help on it and I knew it, yes. Line 14, The Court: She would ask you to help because she could not do certain things. Line 16-17, The witness : That happened a few times, I don't recall how many times. Line 18, Q: Have you ever seen Ms Hou being assigned to washing glassware ? Line 20, A: Yes. P. 294, line1, Q: What about washing others' dirty glassware? Line 2-5, A: I recall at one point that you may have been assigned to do other people's glassware. I don't know how long that was for or if that was for what reason. I do recall also having been assigned to do other people's glassware. P. 297, line 19, Ms Hou: My grievance. Line 22-24, **Q: Did there ever come a time when Mr. Osemwengie indicated to you that he was undertaking something in connection with Ms Hou? P. 298, line 6-9, The witness : When I was reviewing those papers you asked me to look at it, there was a situation where I was talking to a colleague who told me he talked to the manager, the manager telling him to somehow make Ming look bad. Line 10, The court: OK, it's striken P. 305, line 24, Q: Did you have a conversation recently with Ms Hou , that was Oct. of 2002, concerning what Mr. Sheynker told you in the past about what he was instructed concerning directions, coming up with results that are going to make Ms Hou look bad, line 3, A: I have a vague recollection of him saying that. Line 18, The Court: Objection Sustained. My (Plaintiff) protest now: Boris Sheynker would not openly turn the lab supervisor in, but he told Richard Odorfer that the Lab boss ordered him to set**

Ming Hou up. Why I could not use Odorfer's testimony in that! On p. 310, line 18, Ms Hou: Excuse, this transcript says differently. Line 22, Ms Hou: He can't change. Line 23, The Court: If he is changing, he is changing. (My protest now: witness testify differently, I have right to read deposition transcript , he can not change his deposition testimony.

ON P. 312, LINE 2, q: have you ever been threatened with any kind of action or anything if you continue to help Ms Hou? Line 4-5, A: I don't recall specifically being reprimanded or threatened I I helped you. Line 6, Ms Hou,: May I approach and show his written statement. Line 20, Ms Hou: I didn't ask him to prepare this. That's his own writing. P. 313, line 9-14, The witness: I was called to the office of Mr. Sarikhani , in his cubicle. We had a conversation regarding something irrelevant and then we had a second Conversation and he leaned over to me and he said, if there is anything that I do to hurt him or his reputation, something to that effect, that I would be the one going down. Line 25, The witness: At his cubicle at Lefrak 6 th floor, it happened on Monday , Sept. 9, 2002. p. 314, line 7-8, The witness: I believe Ming had initiated either an EEO case or this case or something going on but—line 18, Q: That was before you went for deposition for my case? Line 19, A: Yes, if that's the case , that's the case. P. 316, line 7, The court: .... Where are you presently employed ? Line 8-9, The witness: I still work with New York City DEP; I am currently working upstate Brewster laboratory.

(SELECTED PORTIONS OF MY "POST TRIAL BRIEF" AS REFERENCE FOR THE OVERWHELING DISCRIMINATION ABOUT ME, THERE WERE A LOT

MORE IN MY "POST TRIAL BRIEF", BUT I CAN NOT TYPE TOO MUCH.)

(THE ENTIRE P. 5 OF MY "POST TRIAL BRIEF, EXTENDED TO THE TOP PORTION OF P. 6; THE DISTRIBUTION LAB THAT WAS THE FORMERLY NAMED THE CENTRAL LAB OF THE BUREAU OF WATER SUPPLY, ITS PHONE LIST ---ENTERED AS EXHIBIT AT TRIAL ON TRIAL TRANSCRIPT , P. 455 , TO DEMONSTRATE THAT THERE WERE PLENTY OF CHINESE CHEMISTS AND SCIENTISTS ON MARKET. ITEM (2) ON P. 1 OF MY "POST TRIAL BRIEF", EXTENDED TO THE TOP PORTION OF P. 2 OF MY "POST TRIAL BRIEF; ITEM (12) ON P. 12 OF MY "post trial brief", EXTENDED TO THE TOP PORTION OF P. 13 OF MY "POST TRIAL BRIEF"; THE FIRST PARAGRAPH ONE OF P. 5 OF "MY POST TRIAL BRIEF"; THE FIRST PARAGRAPH OF P. 22 OF MY "POST TRIAL BRIEF" THAT IS ITEM 20 B.)

(7) A. Discrimination against Chinese chemists by Mr. Trikam Patel: At trial, Mr. Patel was asked about his statement at plf's deposition that only two chemist chemists in Special Projects Labs from 1987 to December of 2002. (See p. 143 of trial transcript . Mr. Patel tried to give different answer. I had to read the portion of his statement in plf's deposition transcript, p. 140 , started at line 15, question and answer, it is recorded on p.144-145 of the trial transcript. Then Mr. Patel admitted that he did answer besides Ms Ming Hou, there was a gentleman Jian Qi, who was with us for a brief of time in 1992, for a period of less than a year. Then Mr. Patel tried to differ from the fact he testified at deposition again, on p. 146, he tried to change his original statement by saying at location of Wards Island part of Special Projects Lab, there was a gentleman Mr. Pe, but I knew about Mr. Pe, I had to correct him that Mr. Pe was not

from China. Then he had to stick to his original statement at Plf's deposition, see p. 146, line 15, **A: Yes, if that is not correct then there were two Chinese.**

On p 146, I ENTERED Exh. 38, part 15 A, that is Dr. Qi's quarterly evaluation. On p. 147, we described that there were two Chinese in Special Projects Labs since 1987to December 2002, one was me, another was a gentleman Jian Qi. P. 147, line 9, The court: Who was there for probation and Mr. Patel rated him as very good. Line 14-17, Ms Hou: The purpose of this evaluation, that's very good, this was quarterly evaluation after three months, then later before one year, he gave entirely different evaluation, he fired the person. Line 18, The Court: I will permit you to inquire. On p. 148, line 5-8, Q: This document you wrote very well about him in the comments, in bottom, did you write the employee is knowledgeable , sincere and soft spoken, he gets along well with his coworkers, did you write that ? Line 9, A: Yes, I did. **Then the next Exhibit I entered was Exh. 38, part 15 B, this is evaluation for the whole year. This evaluation dated June 24, 1993, but Jian Qi only received July 23, 1993. Mr. Patel gave him an overall rating as "Unsatisfactory". Then over the pages 149, 150 and 151, Mr. Patel twisted every way to justify his firing Mr. Qi., including claiming that Mr. Qi took five undocumented sick leave days. But Mr. Qi, when fulfilling his duty of citizen by subpoena , he finally subjected himself to be deposed, he turned in three days of sick leave notes which happened still in his possession. (I recalled that he told me over the phone in 1993 that Mr. Patel refused to accept his sick leave notes, I have never met him, nor his wife, I merely talked with them over the phone .) This was one instance of Mr. Patel did to a Chinese scientist, Mr. Patel took advantage** of Mr. Qi's probationary status.

Then as the only Chinese chemist left in the Special Projects Labs , me . Mr. Patel did every thing to destroy me: First of all, Mr. Patel put me to work under his country woman, Mona Dave on Volatile Organic Compounds station, Mona Dave started there about two months earlier, she started in about Nov. of 1993, I was transferred there from
Process Control on Feb. 7, 1994, she was supposed to show me the operation of using computer to command the gas chromatography. There was a" Bench leader " Nadvar Pakravan , both of them would not show me, otherwise , it would be matter of one week, because I had heavy back ground in gas chromatography before I was transferred back to the Process Control lab in March 1987. When they both would not show me the computer operation, I was so anguished, I even blacked out two times at home. I entered Exh. 31 at trial, (p. 207, line 11-14), which consists four doctor's statements, in the one dated April 5, 1995, Doctor David Lichtenstein stated that my blood pressure medicine had to be increased due to my employment, and I also was giving tranquilizer to reduce anxiety. In doctor Lichtenstein's statement of January 27, 1999, he concluded that: "the patient has labile hypertension by her current anxiety over current job situation." And in the statement of Dr. William Baird, dated April 17, 1999, I was so upset over the "conditional" evaluation which was given to me at end of May of 1998, so I slipped the same evening, my bone of my right foot was broken, but I hoped it was just arthritis. Only on 9/1/98, I had to see the doctor, he took x-ray and found out about the fracture. In the statement of August20, 1999 by Dr. William Baird, I went to him on 5/18/99, he found out that my bone of left foot was broken, because I was so troubled by the law suit, I fell by side walk.

Mr. Trikam Patel gave me a filthy evaluation for year 1994. By Exh. 38, part 14 A, (my 1994 evaluation), (p. 139

of trial transcript,) he wrote " her conduct is prejudicial to good order of discipline and had an negative impact on the work of her coworkers and supervisors. " My Exh. 38, part 14 B (p. 140 of trial transcript), is a copy of NYC DEP Uniform Code of Discipline. That charge is in the first page, it was subject to disciplinary action, when an employee was brought up on charge, Union would provide a lawyer to defend him/her, a formal discipline trial would be held, only when the supervisor proved the charge, then the supervisor could put it in the permanent record of the employee. Mr. Trikam Patel would not even give me a chance to defend myself, he just put the false charge in my permanent record. When I appealed to the Employee Service Board about that evaluation, Mr. Patel even accused of breaking a piece of glass (at the hearing of the review board). I called him a liar, his face became all red. So the Review Board chose not to write down Patel's false accuse accusation. In the determination of the Review Board, it stated the employee's saying, and the supervisor's saying. But it did not mention the false accusation of Patel that I broke a piece of glass out of anger. The Review Board Determination has been entered as Exh. 32, part 2, recorded on p. 202 of the trial transcript. My 1994 evaluation was also entered as Exh. 32, part 1, on p. 201. On p. 204, line 23-24, Q: Did they write that you claim I broke a piece of glass out of anger ? Line 25, A: I don't see that in this document.

DISTRIBUTION LAB PHONE EXTENTIONS
(My note now: The formerly Central Lab), dated 10/11/02
(I entered that telephone list on p. 455 of Trial Transcript.)

ADMINISTRATION x6361 Lu, Lin; x6363 Wang, xiaoping

WET CHEMISTRY x6352 Ding, ZHOU; x6355 Ellis, Jenny (my note now: She married American);

DATA ANALYSIS x6398 Huang, John
X6436 Ngo, Hoang (John); x6337 Xu, XF (Vicky)

FIELD x6430 He, Zhiping; x6313 Zhang, Jiye

ORGANIC CHEMISTRY x6433 Hur, Hsia Yung; x6433 Ouyang, Kai; x6433, Koolfah (Danny); x6428 Zhang, Yonghe; x6428 Zhou, Yun

SEM LAB x6390 Guo, Baiying

TRACE METAL x6349 Huang, Zuopeng; x6350 Liu, Ying

RECEIVING ROOM x 6380 NG, Zhimel(Amy)

WASH/MEDIA ROOM x6348 Leung, Mingchung

(Some excerpts of trial transcript, p. 451, 452 and extended to the top of p. 453. These testimonies would tell that the lab of
Bureau of Water supply, formerly named Central, later changed the name to Distribution Lab, the chemists have the same eligibility requirements as chemists in our labs, when the Distribution labs got so many Chinese chemists and scientists, and those labs were on the same floor as my formerly working lab, it proved that there were plenty Chinese chemists available on the market, but the Wastewater labs would not hire nor keep Chinese chemists.)

p. 451, line 8-10, Ms Hou: The Bureau of Water Supply for drinking water, their laboratories are on the same floor.

Would you see the Exhibit 24, the telephone list, so many Chinese— line 7, The Court: Exhibit 24.. Line 17, Ms Hou: So many Chinese. Line 18-21, The Court: I don't –the central lab, the central lab of water supply. They later changing the name to distribution lab. And are these people all chemists. Line 22-24, Ms Hou: They are Chemists, scientists, and all kind of scientific field. Even in the management, you see, xiaoping Wang is in, and Lin Lu , in the management administration. On p. 452, line 12-18, Ms Hou: They –no, no, that –everything was giving—I have a civil service list for chemists for—this is exhibit 3. You got—they are the same. They do the same kind of sork, I know those people, because we perform some work for them sometimes. I know those Chinese people, on the same floor we worked. They do water , the same , like –like we do. Line 19-20, The Court: You say they have the same eligibility requirements ? Line 21-25, and extended to line 1 of p. 453, Ms Hou: Oh yes, exactly the same. Like at the promotion lists,
is the one –one promotion list didn't—didn't separate Bureau, just DEP. Like in the list no. two was a Chinese woman working in the water—water supply lab, in the—in the same kind of of equipments. And they do drinking water analysis. We do— , p. 453, line 2, The Court: Do you know— line 3, Ms Hou: --wastewater analysis.

(Item (2) on p. 1 of my "Post Trial Brief", extended to the top portion of p. 2 of my "Post Trial Brief".)

(2). <u>Dr. Jian Zhong Qi's Deposition Transcript Should be Read.</u>

Reasons:

1. Please refer to the plf's exh. Of conference transcript, (March 12, the Pretrial Conference). On. P. 7 , line 21-22, was typed slightly erroneously, defendants's attorney Ms Gill was typed as saying : " It appears that no one from the law department appeared at the deposition." But I recalled very clearly it was "not available , no one from the law department was available." That was why I ordered the transcript of the conference. And on p. 8, line 1-3, the court: Don't apologize. I will allow it. I'll allow the deposition to be received. Yes. And line 5-6, The Court: Okay, I ruled in your favor now, Okay? You don't want me to change my mind, right ? If defendant's attorney did not say "Not available ", why would Judge Sand ruled to allow me read the deposition transcript ?

2. And on trial transcript p. 117, (Tuesday 3/27/07), line 20-25, continued to p. 118, line 1. **Mr. Madden was shown a Notice Of Subpoena without Affidavit of Service by my former attorney Henry Saurborn. On p. 118, line 21-22, Madden: We would request that plaintiff produce an affidavit of service."**

Since my former attorney Saurborn and I had "Dismissing attorney", I became Pro Se again in about 2004, so the documents mostly were returned to me. Then I found the Affidavit of Service on Dr. Jian Qi. So on Thursday , March the 29, 2007, on p. 326, line 7 to9, Ms Hou: I found from the return file from my former attorney that he offered affidavit as proof of service, affidavit of service on Jian Qi, and line 19-21: Ms Hou: My attorney has a computer print out of the Notice of Subpoena . I have the

affidavit here of service, served on Jian Qi. Line 22, The Court: Service of what. Line 23, Ms Hou: Of the subpoena. Line 24-25, extended to line 1 of p. 327.The Court: Look at the document , counsel, she is referring to and see whether this satisfies the notice requirement. Line 3-9 of p. 327, Mr. Madden: Defendant objects. This is an affidavit of service regarding a notice of subpoena. This is no notice here that the defendant received notice of the actual deposition of Mr. Jian Qi. Your honor instructed plaintiff produce the document. She produced her former lawyer in this court two days ago, and he did not produce an affidavit of service . All the above mentioned papers are entered as Exh. 10, (with various parts).

What's wrong that my former attorney and I produced the two documents separately ? Because he and I split in 2004, he did not have the affidavit of service in his possession any more. I then found it in the return box On Tuesday, March 27, 2007, my former I even know why law department did not send a lawyer to that deposition, **attorney Saurborn came to court to swear that he did send the both document s to then defendant's attorney, and he had conversation with then defendant's attorney, but I did not discover that piece of affidavit of service until Wednesday night. So Mr. Madden saw the the two pieces of documents separately, why should he object** ? because it was not in NYC, it was in Rockaway County. Dr. Jian Qi got stroke, he was bound in a wheel chair, it was hard for him to move around. **Defendant's attorney wanted Affidavit of Service on Tuesday when he was shown the Notice of Subpoena., then on Thursday, when I showed him the Affidavit of Service , he wanted Notice of Sobpoena. (Exh. 10.**

part 1 A). Defendant's attorney just simply would not want the important evidence of discrimination to be used. That is not right.

(Item (12) On p. 12 of my "Post Trial Brief", Extended to the top portion of p. 13 of my "Post Trial Brief")

Mrs Purnima Dixit, Administrative Director of Laboratories, in charge of all Process Control Labs of Bureau of Wastewater Treatment, NYC DEP, her former title was Chief of Process Control Labs, she admitted at plf's deposition on her on December 16, 2002 that she said to another Indian chemist. In crowede Jamaica lab ;" We Indians are Aryans, Hitler said we are the best." In trial transcript, p. 24, line 12 –15, Q: Mrs Dixit, I would like to ask you , just briefly because I don't have much time, in 1997, you said in the presence of Mrs Yvonne Huang , you said that we Indians are Aryans, you said we are the best, you said that ? Line 16, A: I never made that statement. On p. 25 of the trial transcript, line 12-14, The Court: ....You have a deposition of this witness in which she said she did say that. Line 15, Ms Hou: Yes. Line 16, The Court: Give me the date of the deposition. Line 17, **Ms Hou: December 16, 2002, 10:11 AM. Line 21-25, Ms Hou: She said, I read, OK. Mr. Saurborn, my former attorney asked her, I am looking at p. 70, deposition page 70, line 8, I am looking, I guess the first one (the reporter typed wrong as two, it is hereby corrected,) I want to look is the number 2. It looks like Mrs Huang has attributed to you a statement, I guess, it is in quotes, it says , we Indians are Aryans, Hitler said we are the best.** On p. 26 of the trial transcript, line 9, The Court: Let me see what you are reading. Line 14-20, The Curt: ...your attorney says of this witness, it looks

like Ms Huang has attributed to you a statement , I guess it's in quotes, it says quote, we Indians are Aryans , Hitler said we are the best, close quote, I think that was it. Then he asks did you at any point in time say that or anything like that. **The person answers , I never mentioned anything to her like that. Line 23-24, Ms Hou: See further down what she answered, I said it to someone who is Indian about our Indian culture. P. 27, line 16-19, Q: P. 71, line 6-10 of the deposition transcript, (the reporter omitted the reference of the page and line on the deposition transcript, it is hereby corrected.) Your answer: It could be April, I don't remember the date, question: Ms Huang complaining alleged this happened in April '97, do you know whether that's accurate. Answer: I could be April I don't** remember the date. (The reporter left out "question and "Answer", it is hereby corrected.)On p. 28 of the trial transcript, line 7-11, **Q: (Reading transcript), On p. 70 (of the deposition transcript), line 18-19, Q: Okay, had you said that to some one else ? (Line 20-25 of the deposition transcript), A: As far as I recall, two of us, there is another gentleman who is still working with us, we were talking something about Indian Culture and that's when I must have mentioned it to him** but it was never directed to Ms Huang. (**The reporter left out "Question" and "Answer", I remember that I definitely read out "Question" and "Answer", it is hereby corrected.)** On p. 12-13 of the trial transcript, The Court: Show it to the witness ; tell her the line and ask whether she ever said that. Line 14, Q: Line 20, line 16-20, Q: (Reading transcript) Answer: As far as I recall,two of us, there was another gentleman who was Indian still working with us . And we were talking something of Indian culture and that's when I must have mentioned it to him but it was never directed to Mrs

Huang , p. 29 on the trial transcript, **line 5,Ms Hou: She can't change the deposition.**

Since the reporter did not write clearly the "Question" and "Answer" when I was reading the deposition transcript, I do hereby put the appropriate portion of the deposition transcript inside the "Post Trial Brief", along with the appropriate portions of the deposition transcripts on other witnesses, so that there would not be confusion to judges.

And Mrs .Dixit, after the deposition on her at December 16, 2002, filed a "correction " ON THE DEPOSITION TRANSCRIPT, SPECIFICALLY ABOUT P. 71, LINE 5, ON P. 71, LINE 2, Q:: okay, Who was the individual you were having the discussion with ? What was his name ? Line 5, A: I think it was Supervisor Aggarwal. Mrs. Dixit's explanation of the change was: "I do not recall making that statement, because Mr. Aggrawal is not a supervisor. His name is Sukhdev Aggrawal he is an assistant chemist."
Mrs Dixit re-affirmed her admission to the comments that we Indians are Aryans, Hitler said we are the best, she just wanted to change the name of the person whom she said those things to, not "supervisor, but Sukhdev," How can she later at the trial trying to denial what she already admitted testimony at deposition !

(The first paragraph of p. 21 of my "Post Trial Brief"):

Mrs Purnima Dixit at trial denied her admission of the racial slur: " We Indians are Aryans, Hitler said we the best." , even after I read PLF's deposition transcript on her, in court testimony and at deposition both were under oath, the deposition transcript recorded quite a length of discussion, in the Jamaica lab, with which person, why she said that, and approximately what year and month she said that. She even signed a "correction" form to correct the gentleman's name, it was typed by reporter as "supervisor aggrawal" , on line 5 of p. 71, she wanted to change to "Sukhdev Aggrawal", she wrote in the correction that he was not supervisor. She denied it in court, is it PERJURY ?

(The first paragraph of p. 22 of my "Post Trial Brief," that is item 20 B.):

20 B. On p. 486, I entered Exh. 44,part 4 A which consists two complaint of Mrs Yvonne Huang with NYS Human Rights , line 10, it is "Yvonne Huang," not "Yvonne Wong", it is hereby corrected. Ms Gill quickly objected, line 12-13, Ms Gill: Objection, your honor. This was a ruling that was previously decided. This was all concluded. That was black lie! Yvonne Huang 's discrimination complaints with NYS Human Rights were never decided by this court. Yvonne Huang is a Chinese chemist, I worked with her in Jamaica Lab, her complaint of 10/28/97, the second complaint in the bundle,filed 10/28/97, IDE-O-97-5802974-E that charged Mrs Purima Dixit giving racial slur in front of all the laboratory "we Indians are Aryans , Hitler said we are the best., Purnima Dixit then pointed to me and said that I was Mongolian." , which was withdrawn by Mrs Huang upon the request of the Bureau of Wastewater Treatment, NYC DEP. Because prior to that

, in about May of 1998, the Bureau put her name back to the position of list of promotion to Associate Chemist, (list no. 10), she then quickly got appointed by the Bureau of Environmental Engineering. Yvonne Huang is my people , Chinese from China, (Taiwan), that is discrimination evidence , please read it.

(I was not allowed to use Odorfer's deposition transcript to pin down his testimony for impeachment purpose.):

(On trial transcript, p. 296, line 1-25, extended to line 1-3 of p. 297. Examination on Richard Odorfer.):

Ms Hou: He answered different from what he testified, his answer is different, OK, Answer, page 44, line 18, answer, Ming, she has to work, actually there was one incident when Ming was assigned to a station and that station had a problem in separating peaks and Ming managed to separate those peaks which is important for the analysis to be correct.

MR. Madden: Objection.

The Court: Sustained. Stricken.

The witness: I answered that already.

The Court: Please, ma'am. Try to ask him questions, not to read his deposition.

Ms Hou: Judge.

The Court: Don't argue with me. Ask him questions or say you have nothing further of this witness.

Ms Hou: Just try to explain because he forgot after so many years, he is not even in the lab anymore, he transferred.

Q: Do you know what that station was?

The Court: No. That's not a meanful question.

Ms Hou: That my colleague couldn't attest for my work.

Q. Do you recall other innovations or anything else that she has done to help the lab do its work better ?

Mr. Madden: Objection.

The Court: Sustained. We ruled on that before. There is no issue in this case as to your competency and no issue in the case as to any contributions you made to the lab .

(On the trial transcript, p. 302, line 24-25, and extended to p. 303, line 1-6. Examination on Richard Orderfer.) :

Ms Hou: It's different, he answer.

The Court: All right, that's his testimony now.

Ms Hou: Deposition transcript, that was much fresher his memory, now it's how many years later.

The Court: Ask the next question please.

Ms Hou: It varied from his deposition.

The Court: The next question or your examination will be concluded.

(On trial transcript, p. 310, line 18-25. Examination on Richard Odorfer.):

Ms Hou: Excuse me, this transcript says differently.

The Court: I don't care if it's carved in stone; that's not what I want to know. I want to know what this witness, his testimony is.

Ms Hou: He can't change.

The Court: If he is changing, he is changing.

The witness: I am just saying what I remember, that's all.

(P. 18 of my Appeal Brief, item (E). the appropriate excerpts which spelled out the necessity of using deposition transcript to pin down the important witness Richard Odorfer's testimony by using impeachment.) :

(E). .....I could not fight Judge Sand's interest, since he would not allow me to question about technical things at all, and since he would not allow me to read deposition transcript for impeachment. Odorfer was my tenant for less than a year in the rear bungalow some time after I retired, we had dispute between landlord and tenant, Odorfer carried grudges about me, he would not get involved any more. And he was afraid the revenge from the labs of DEP. So I had to give up that important witness.

(Appropriate excerpts of trial transcript, p. 387-p. 388, which shows how ironical Judge Sabd enforced the "two sides stipulations" between the Judges and defendant's attorney, although under my vehement protest. On Thursdeay, March 29,when I was attacked by Sarikhani and defendant's attorney by going through the bad Memo and bad Evaluations on technical issues, I was not allowed tom defend myself by presenting my technical proficiency and contributions.):

p. 387, line 2, Ms Hou: He can attack my technical—I can't prove my profession proficiency. Line 4, The Court: Your comments are striken. Line 5, Ms Hou: The Court does not allow. Line 6-7, The Court: I am going to allow you four hours on Monday, just make careful notes. Line 8-9, Ms Hou: I can talk about my accomplishments, my technical proficiency. Line 10, The Court: No, you can--, line 11, Ms Hou: He attack me.

Line 12-14, The Court: You can reply to what the witness has just said. Let me talk about Monday. You are going to have four hours. That's a lot of time. Line 15, Ms Hou: But you don't allow me— line 16, The Court: Ma'am, let me speak please, Line 17, Ms Hou: Yes,, Line 18-24, Ms Hou: The court: Four hours is a lot of time. Please use it wisely. I suggest that you make clear notes for yourself, that if there are any documents you are going to want to use, you have them available in an order so you doc't waste time looking for documents. I will allow you to respond to what the witness just said. But I remind you again that the defendants have stipulated— line 25, Ms Hou: I didn't stipulate with them.
On p. 388, line 1-9, The Court: Listen to me, ma'am. You are very resistant. I try to help you and explain. There is no issue in this case as to your competency. There is no claim made by the defendant that you were not promoted because you lacked adequate skills as a chemist professionally. If you want to spend your time otherwise, (A), it would be a mistake for you to devote time to things which are not at issue, and (B), I will not allow it. This is not the first time you are hearing that. All right. Do you have further questions. Line 10-11, Ms Hou: When he attacked my technical proficiency, I can not rebut, defend myself.

My protest Now: If it was not an issue, why Judge Sand allowed the witness (Sarikhani) and defendant's attorney to attack my technical proficiency at trial, if I wanted to tell how the lab bosses plotted to make things look bad on me, that's how I got those bad evaluatoions and bad Memos, Judge Sand always would not allow me to say it, he also forbade my former colleague Odorfer to testify about it, I had been allowed to defend myself at all.

(Court Order of Judge Henry B. Pitman, magistrate Judge , dated June 24, 1999, appropriate excerpts to show that my Age Discrimination claim was already established on denials of promotions.):

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
----------X

Ming Yen Hou,

Plaintiff,

-against-

New York City Department Of Environmental Protection,

Defendant.

98 Civ. 1518 (LBS) (HBP)

ORDER

----------X

Pitman, United States Magistrate Judge:

.....

1. .....
2. . No later than August 16, 1999, defendant shall produce those portions of the personnel files of the following individuals that provide age, education and employment history:

    a. Purnima Dixit
    b. Peter Williamsen
    c. Leela Maret
    d. Leslie Fox
    e. E. Mansour

f. E. Lara
g. Zina Youngchowski
h. Nurim Islam
i. Obeba Negatu
j. Lalu Manachan
k. Trikam Patel
l. Ghorban Sarikhani
m. Nadvar Pakravan
n. V. Shah
o. Max Vera stegui

3. .....
4. ....
5. ......
6. ....

Dated: New York, New York
June 24, 1999.

So Ordered

Henry Pitman
United States Magistrate Judge

Copies mailed to :
Ms Ming Yen Hou, 177 Beach 114 th Street, Rockaway Park, New York 11694
Leonard Kaplan, Esq., Assistant Corporation Counsel
City of New York, Room 2-191, 100 Church Street
New York, New York 10007

(About my protest to the denials of Promotions of 2000 and 2001, and the U. S. Civil Procedure 15(b) that allows the claims which are similar in nature to be on trial, it is all proven in "Plaintiff's Declaration in Support Of Her Objection To The Report And Recommendation Dated February 17, 2004.", The exhibits in this document all were during Discovery, Judges and defendant's attorney should always had aware of those protests.):

1. In a letter I sent to Judge Leonard Sand, dated Dec. 17, 2001,
Re: Ming Yen Hou –against- NYC DEP 98 Civ. 1518 (LBS)(HBP), In the second paragraph : " Because they did not allow me to replace Sarikhani, Sarikhani continued to be Lab supervisor, and on August 5, 2001, they even promoted Sarikhani to Associate Chemist, Level II, with a big annual salary increase about eight thousand dollars, please see Exhibit IV, which is a copy of published "City Record", Sarikhani did get the increase, and our colleagues all knew that Sarikhani got retroactive pay back to when, I believe it was retroactive back to Dec. of 1995, that was the time he started to be acting Lab supervisor. All those things were not posted out, according to city practice , provisional positions should be post out for every one to apply." .....,

I certify under penalty of perjury that the foregoing statement is true and correct according to the best of my knowledge and belief. Respectfully yours, _____

Ms Ming Yen Hou,
Plaintiff Pro Se. Wk. Phone: (718) 595-6329, 7AM-2:30PM,
Home: (718)318-1741, after 4 PM.
XC: Judge Henry B. Pitman
Mr. Michael Hess, Defendant's attorney.

2. In a document which I sent to the defendant's attorney, dated January 12, 2002, titled as : "Plaintiff's Additional

Monetary Figures. 98 Civ. 1518 (LBS)(HBP). The first paragraph: " Since the situation has changed starting 08/05/01, on that date, the acting Lab Supervisor, Ghorban Sarikhani, has been promoted to level II of Associate Chemist, because of the fact that he has been doing the work of lab supervisor since December of 1995, so he was promoted to level II of Associate Chemist, which has been the level and title of lab supervisor of our Bureau, (Bureau of Wastewater Treatment, NYC DEP), so they also give him retroactive backpay to level II of Associate Chemist, I believe that it was to Dec. of 1995.

3. In my Motion filed on January 29, 2002, in its "Notice of Motion", p. 2, item c. Mr. Patrick Jagessar, promoted provisionally over me to Associate Chemist, level II in Aug. 5, 2001, it is recent promotion, there were not even any memo for recruitment of those promotions, Mr. P. Jagessar was permanent Assistant chemist, but with a provisional title of Associate Chemist, level I, which was given to him in 1993 aqs described above, he took promotion Exam. With me, I got to be list no. 1, and he failed the exam., but now he got to be level II, I am still level 1 of Associate chemist, (permanent and on civil service), it is prohibited by NYS Civil Service Laws, provisionals must be replaced within four months after the establishment of civil service list, that means no later than Sep't 6, 1997, (our prom. List to Associate Chemist was established on May 7, 1997,) and NYS Laws prohibited to prolong provisional appointment longer than nine months, Mr. Jagessar was appointed provisional Associate chemist , level I, in 1993, to 1997, it was much longer than nine months Multiple violations of State Law , victimized me to the extremity. Ghorban Sarikhani is another extreme case, he was appointed

Associate chemist, level I in 1990, and he took the promotion exam. With me, and he failed the exam. , but he was not replaced by me, (the no. 1 of the prom list ,)and he continued to be the acting lab supervisor, I had to go through probation for the promotion in his hands, I went through hells. Now Sarikhani got Promotion to level II of Associate chemist on August 5 of 2001, and he got retroactive pay back to earlier time, I believe it was to Dec. 1995, that was the time he started to be acting lab supervisor, our Bureau set level II of Associate Chemist as the standard title of lab supervisor. We will have a lot to fight over these issues in trial. "

4. The report on my Economic Damage by the forensic accountant, dated December 31, 2002, and it was sent to then defendant's attorney on December 31, 2002 by the forensic accountant, December 31, 2002 was the dead line of Discovery On its p. 1, under "Introduction & Background" it stated: " Ming Yen Hou graduated with a B. S. in Chemical Engineering from National Taiwan University in 1952 and a Maste degree in Chemistry from Oklahoma State University in 1958. She has in excess of 40 years of experience as a chemist, all but two years of which were in the United States. She began working for New York City as An Junior Chemist on March 16, 1972. On October 26, 1974, she was promoted to Assistant Chemist. In November of 1997, Ms Hou was promoted to Associate Chemist (Level I)."

And on its p. 2, under the title of "Methodology", the second paragraph: " In order to quantify Ms Hou's economic damages, it is necessary to determine , through the use of statistics, reasonable assumptions and estimates, the amount

Ms Hou would have earned if she had been promoted to Associate Chemist (level I) in 1990, then to Associate Chemist (Level II) at the end of 1992, then to Associate Chemist (Level III) in June of 1998, and finally to the management position of Administrative Director of Laboratories (Level M-1) in December 2000. The delay in Ms Hou being promoted to the various aforementioned positions caused a significant diminution of her past earnings and a retardation of her professional development and future earnings."

5. The letter from then defendant's attorney Leonard Kaplan to me, in reply of some of my protest and inquiries, dated December 18, 2001. On its page 1, the content to the item (1). :" Re: Hou v. New York City Dep't Environmental Protection, 98 Civ. 1518 (LBS)(HBP),

Dear Ms Hou: Please be advised of the following: (1). Trikam Patel was not appointed to the position of Administrative Director of laboratories in 1999. He was appointed in 2000."

All these Exhibits were in the Motion document "Plaintiff's Declaration In Support Of Her Objection To The Report And Recommendation Dated February 17, 2004." Docket # 78. In Addition, there was also NYS law which I put in my document to Then defendant's attorney, the above item 2:

" NYS Civil Service Law, # 65, item 2, Time limitation on provisional appointments. No provisional appointment shall continue for a period in excess of nine months. Item 3. .... Provided, however, that in no case shall the employment of any such provisional appointee be continued longer than four months following the establishment of such eligible list.

And also inside the said document I enclosed as Exhibit of the appropriate portion of Law book: "Presenting Plaintiffs In Title VII Actions, Volume 1, by Kent Spriggs, published by Wiley Law Publications # 8.46---Instances of Discrimination Occurring after the Filing of the Charge. " It is well established that acts occurring after the filing of an administrative complaint may be presented at trial without the necessity of additional administrative charges being filed if they are similar in nature or probably related to the original allegations. (235). As the court explained in Gamble v. Birmingham Southern Railway Co. " To force an employee to return to the EEOC every time he claims a new instance of discrimination in order to have the EEOC and the courts consider the subsequent incident along with the original ones would erect a needless procedural barrier." (236) In Turner V. Orr (237) while technically construing remedial provisions of a consent judgment the Eleventh Circuit stated that it would use Title VII principles including those applying to the construction of charges of discrimination. The Charging party filed a charge that alleged that he had suffered discrimination in promotions. Thirteen months later he was denied a specific promotion. The defendant argued that a new charge was required for the class member to litigate the legality of that promotion, but the court of appeals held that the original charge would suffice.

Federal Rule of Civil Procedure 15 (b) provides the proper tone . The liberal rules of supplemental pleading allow for the pleadings to be amended to conform to the evidence at trial, and trial of these issues may occur even without such amendment.

(In answering my Interrogatories, complying the Order Of Magistrate Judge Pitman, former defendant's attorney Leonard Kaplan wrote the letter of Feb. 20, 2001 to my short term then attorney Robert W. Ottinger

, it the reasons of denials of promotions, he gave primarily on technical strength, some excepts of the letter are given as follows.):

1992 Associate Chemist II. Leela Maret was selected as Supervisor of Jamaica Laboratory. She had received outstanding ratings from five different supervisors, had been serving in the capacity of Acting Laboratory Supervisor at the time of her selection; had already made a number of significant contributions to the laboratory's technical programs as well as implementing physical improvements in the Jamaica Laboratory in her capacity as Acting Supervisor; was an excellent teacher and analyst and was innovative and creative; exhibited the requiste demeanor and patience with new employees; had a reputation for accuracy , neatness , and organization; excelled in proficiency testing; was good at a wide variety of problem solving, demonstrated ability to learn and develop ; and establish good working relationships with the plant chiefs, Process Control Engineers and her peers. Ms Hou had no supervisory experience , had a history of personality problems; and was unfamiliar with general laboratory reporting....

1993 Associate Chemist III. John Green was selected to be in charge of the Wards' Island Special Project Laboratory. He had demonstrated a thorough knowledge of laboratory operations and dealing with scientific personnel; had been an impeccable supervisor; and long experience and excellent quality of work with regard to highly sophisticated advanced and difficult chemical analysis, which that particular laboratory was involved in; and had the ability to keep the morale of the people under his supervision high and the quality and quantity of their work at the high level required. Ms Hou had little experience with the type of work in that department; and had a severely limited—indeed negative – ability to get along with and motivate the many people to be

supervised to a degree overall performance level would have dropped. Purnima Dixit was selected was selected to be in charge of Process Control Laboratories. She had demonstrated a through knowledge of chemistry and laboratory operations; excellent supervisory capability and quality of work; excellent interpersonal skills; had been in charge of a process control laboratory; and had been instrumental in setting up the new Owls Head laboratory to the point of efficient and effective operation. Ms Hou had little supervisory experience in the Department; and was unable to interact adequately with personnel.

1997 Associate Chemist II. George Sarikhani and Patrick Jagessar were selected to serve as Deputy Section Chiefs but not appointed. Ms Hou lacked the requisite management skills; did not demonstrate good communication skills; did not have good writing skills; had not developed good working relationships with her co-workers; and did not respond well to interview questions. The selected candidates did possess these skills. **They also had sharper technical skills;** and they had a much greater knowledge of how the agency operates. E.g., Personnel procedures, purchasing and procurement, and workload distribution. Mr. Sarikhani was Acting Laboratory Chief since the laboratory opened.

1997 Associate Chemist III. Trikam Patel was selected to serve as Section Chief , managing a staff of 35. Ms Hou had little supervisory experience. She lacked the requisite management skills; did not demonstrate good communication skills; did not have good writing skills; had not developed good working relationships with her co-workers; and did not respond well to interview questions. The selected candidate did possess these skills. **He also had sharper technical skills;** and he had a much greater knowledge of how the agency operates, e.g., personnel

procedures, purchasing and procurement, and workload distribution.

1998 Associate Chemist II. Vikram Shah was selected to serve as deputy Section Chief of the Special Projects Laboratory, **He had an advanced degree and extensive experience,** including over seven years in a supervisory capacity in the Special Projects Laboratories; and his experience in testifying as an expert witness was valuable to the laboratory's role in Industrial Pretreatment enforcement. At that time, Ms Hw still probationary in her Associate Chemist I title, and was thus ineligible to Apply.

(My Education and chemical professional experience of forty some years in USA , that was submitted to the management in all the applications for promotions, only can be mentioned very briefly herein.): (On my resume.):

Hou, Ming Yen
177 Beach 114 Street, Rockaway Park, New York, 11694
Tel. (718) 318-1741 (eves)

Education

Full Program study toward Doctor of Science in Chemistry (major in Physical Chemistry), The Polytechnic Institute of Brooklyn, Bklyn, NY. 1959-61. Accomplished research goal of dissertation in Photo-electro chemistry. (Solar energy conversion by pho-reducible dye system, converted solar energy to electric energy.)

M. S. in Chemistry (major in Physical Chemistry) from Oklahoma State University, Stillwater, Oklahoma. 1958.

Verified stoichiometric equation: So2 + O3= SO3 + O2, created system for mechnism study. It involved high vacuum. Gas phase reaction, and analytical methods development.

B. S. in Chemical Engineering, National Taiwai University, Taipei, Taiwan, 1952.

(I only can write one important professional experience herein, I can not write down my over 40 years of experience herein.):

IX. Physical Chemist GS 11, 1961-64

Solid State Chemistry Branch, U. S. Air Force Cambridge Research Lab. Bedford, Mass.

Accomplished radiation induced cross linking of poly vinyl methyl ether. (Polymerized from monomer of vinyl methyl ether). Evaluated radiation effects of semi-conducting crystals.

(My diploma of Master of Science from Oklahoma State University,1958.):

The Oklahoma State Regents for Higher Education
Acting Through The
Oklahoma State University
OF
Agriculture And Applied Science

Have Admitted

Ming Yen Hou

To the degree of

Master OF Science

And all the honors privileges and obligations belonging thereto, and in witness thereof have authorized the issuance of this diploma duly and sealed.

Issued at the Oklahoma State University at Stillwater on the twenty –fifth day of May, nineteen hundred and fifty eight.

For the State Regents: For the University

(signatures below are omitted herein.)

(Stamp of "Oklahoma State University" is also omitted herein.)

(My "Notice Of Result" for the promotion Exam. To Associate chemist, list was established on May 7, 1997, I was ranked list no. 1, <u>the oral test was part K, I got 91.750 as score.):</u>

Notice of Result

The City of New York
Department of Personnel
3556
Exam. No.

ASSOCIATE CHEMIST

THE SCORES YOU RECEIVED IN THIS EXAMINATION ARE SHOWN BELOW

A	96.290	85	N	100.00	15	E	77.500	K	91.750
Part	test score	weight	part	test score	weight	part	test score	part	test score

Ming Y Hou

1	177 Beach 114 Street	96.847
list number	Queens NY 11694	Adjusted final average

"Part " E. written Test—Part 1 **K. Oral Test**
Code: G. Written Test—Part 2 L. Education &/or experience rating

H. Written Test—(Final average
J. Practical Test M. Practical Experience or technical /oral test

N. Seniority Rating
S. Performance Rating
T. Performance & Seniority Rating
U. Competitive physical test

(Excerpts of my appointment as Associate Chemist , effective November 24, 1997.):

Department Of Environmental Protection THE CITY OF NEW YORK.
Executive Offices
59-17 Junction Blvd., 19 th Floor, Corona, New York, 11368-5107
Joel A. Miele. SR., P.E., Commissioner
(718) 595-6565 Fax: (718)595-3525
E-mail Jmiclc @ pppmail. Nyser.net

January 16, 1998

Dear Ming Y. Hou:

You have been appointed from the civil service list as an Associate Chemist effective November 24, 1997.

As a probable permanent civil service employee , you are required to serve a one (1) year probationary period from November 24, 1997 to November 23, 1998.

Sincerely,

Marlene Hochstadt
Director of Human Resources
Management and Labor Relations.

(Excerpts of my letter to Mayor Giuliani, dated March 20, 1998, which stated the two certifications for the list of Promotion to Associate Chemist, it was the most recent facts to that time.):

177 Beach 114 Street,
Rockaway Park, N. Y.
11694.

Dear Mayor Giuliani:

.....(1). I am the promotion list # 1, (Promotion exam. # 3556, Prom. To Associate chemist0, Mr. Ghorban Sarikhani , who took the prom. Exam. With us, but he did not make the list, he had a provisional title over me as provisional Associate chemist , level I, after the promotion list was established on May 7, 1997, the management did not want to use the list, the city Department of Personnel had to re-certify the list to DEP, (the first time of certification to DEP was on May 30, '97, the re-certification was on Nov. 6, '97), and I wrote to you over their desire of by passing me for three times. I heard that tou wrote to them to appoint me. They appointed me with great reluctance, effective Nov. 24, 1997. This is the

rotten thing they did to me: They did not replace any of their provisionals, they merely added six positions for Associate chemists. Five of the six added positions were for our Bureau, Bureau of Wastewater Pollution Control. The list is still in existence, they violated state law to protect their provisionals, not to replace them with the eligibles of the list. The most rotten and hurting thing they did to me is that they put me in the hand of that unqualified and illegitimate lab supervisor , Ghorban Sarikhani,.....

Respectfully yours,

_____

Ms Ming Yen Hou

(My certificate of 25 years of service with NY city, the 5 th day of 1998.):

The City of New York

Department of Environmental Protection

DEP

The Mayor of the City of New York

And

The Commissioner of the Department
Of Environmental Protection
Hereby present this certificate of recognition
To

Ming Yen Hou

For 25 years of dedicated and faithful service
To the City of New York
Awarded this 5 th day of November 1998

Rudolph W. Giuliani	Stanley W. Hill	Joel A. Miele , Sr.
Mayor	Executive Director DC 37	Commissioner

(Deposition transcript on former colleague Richard Odorfer, October 1, 2002, 12;22 PM, some simple but obvious excerpts. The deposition was conducted by my former attorney Henry Saurborn):

On p. 44, line 13-17:
Q: Have you seen her make any contributions that you believe are significant in terms of work that the lab has to do ?

Mr. Shin: Objection. You can answer .

Line 18-25:
A: Ming, she has to work—actually—there was one instance when Ming was assigned to a station and that station has a problem in separating peaks, and Ming managed to separate those peaks, which is important for the analysis to be correct.
Q: Do you know what that station was ?
A: Yes, VOC, I believe.

On p. 45, line 1-25, and extended to p. 46, line 1-9:

Q: Do you recall any other innovations or anything else that she has done to help the lab do its work better ?
A: One instance—

Mr. Shin: Note my objection to that.

A. One instance , I was having a similar problem with separation of peaks, and whether Ming told me how to do it at that time or whether I recollected her explaining to me how she fixed it, that assisted me in separating peaks that weremfused together at my station.

Q. Do you know what that was on ?

A: That was on PCB/Pesticides , that was fused together in my station also.

Q: Do you recall ever getting assistance from her with methods of clean up, cleaning up of samples ?

A: Restate that ?

Q: Do you recall getting any assistance from her in terms of showing you how to clean up samples ?

A: Oh, yes, sure.

Q: What do you recall in that regard ?

A: We work—well, she had shown me how to do, I believe, silica gel cleanup. Silica gel cleanup, that's what I recall right now.

Q: Do you know what station you were at at that point ?

A: That would have to be PCB/Pesticides section.

(Some excerpts of the deposition transcript on Mr. Trikam Patel, DONE ON December 11, 2002, conducted by my former attorney Henry Saurborn. That Special Projects lab at Lefrak City had persistent problems with

detection of PCB in sewage sample, in 1998, I was given left over sample of the sewage sample collected in 1997, the sample had been one year and two months old, they kelp in freeze, than I was given to prepare the sample, I

prepared right, so the lab had first time of findinding positive of Pcbs in sewage sample. From that time , the "Track Down 'project was successful, earlier they had to give it to a Canadian lab as contractor to do it. I subpoenaed the documents from NYS Department of Environmental Conservation, and found out their failure, and which Canadian Lab was contract. After my contribution , the Special Projects lab learned my correct way of preparing the samples, so immediately they did not need that Canadian contracting lab any more. My outside expert viewed all the documents , ready to testify, that was why defendant's attorney made two sides of stipulation, I was not allowed to talk about any technical things. And my outside expert witness was not allowed to testify. It was really dark connection. I even was not allowed to question the witnesses of the technical things. In Patel's deposition transcript he admitted that I was the first one prepared the "Pisces samples, which was sewage sample collected for detecting PCBs, and which got positive PCBs the sewage sample. But I did not get any recognition , appreciation or reward. The Chiefs should know to solve the problems, but I had to solve the problems for them.):

On p. 122. A: .....(by Patel). And then continued to p. 123. (A: by Patel,)If –see , what happened is, as I explained to you in the past, initially, there were problems with extracts; and , then the clean-up procedures. The procedure was refined. I have based on those papers –I have no idea, why , these concentrations of the clean up were done on the same sample on two occasions. I have no way of knowing , what was the reason. I believe, that the sample was, let's say, the later extraction date I used, for this analysis, let's say , the sample that was concentrated on 4/13/98, if that was used, you see some positive numbers, in a way.

Then on p. 124, line 13-25: **Q: Now, sir, at any point, did Ms Hou share with either, you or others in the lab, the processby which, she was able to extract PCBs in the Pisces sample that she was doing in at least, what we 're seeing here in Exhibit 13 (indicating)?**
A: Yeah, I believe , that she as, of April 13. She was involved with the clean –up, the concentration and clean –up
Procedure of the Pisces samples.
Q: Did she show you or others in the lab, how she was able
To do that successfully ?
A: I don't recall exactly.

(Appropriate excerpts of my Appeal Brief, p. 4, Item (3) , sub -item (B). It was written about the letter from NYS Dep't of Labor to NYC DEP, dated 7/30/76.):

(B). In second paragraph, he used the old time Memo from Dr. Kirschner of 9/75 to destroy all the evidence I managed to present at trial and Post trial brief, it is ridiculous. I specifically put together some appeal trial exhibits, no. 136A, docket no. 133.

(1). NYS Dep't of Labor issued Notice to NYC DEP (former name as EPA), dated 7/30/76, after I quit NYC DEP due to Kirschner's discriminatory actions and attitude against me, I applied for unemployment insurance , I got vindicated by NYS Dep't of Labor, they granted me unemployment insurance benefit, which is very rare when the employee quit job voluntarily. NYS dep't of labor wrote: "Claimant left her job with your agency for reason which to her were compelling. The circumstance under which she left are not disqualifying . (For unemployment insurance benefit.) After evaluated

by the employment counselor, I was vindicated from Kirschner's revengeful accusations. (I complained about him to his supervisor.) See Appendix p. 1558, in trial transcript, (p. 471-472), I testified about my winning verus Kirschner's Memo of accusation, and about the fact that I was vindicated by NYS Dep't of Labor from Kirschner's revengeful accusation. And trial transcript (p. 534-536), I testified about why and how Kirschner made troubles with me unfairly, then I went to complain to his supervisor, Mr. Miller, then Kirschner wrote that revengeful Memo. My testimony on stand was recorded from in the trial transcript (p. 417-p. 494), then def's attorney Gill cross examined, recorded in trial transcript (p. 495-p. 531). Then I addressed to the issues which I was not allowed to explain during cross examination, my addressing (explanation) was recorded in trial transcript (p. 531-p. 538).

(Excerpts of my "Post Trial Brief", on p. 3, item (4). It has been proven that I am supervisor material. This item was extended to the top portion of p. 4.):

(4). It has been proven that I am supervisor material:
On p. 364, I entered Exh. 43, part 4, and Exh. 43, part 4-1, a group of sign in sheets. On p. 364, line 14-18: The Court: .....Line 17, " and May 26, '98", it is not as typed by reporter 'May '98", it is hereby corrected. On p. 365, line 13-15, Ms Hou: on line 14, " my shift was 6:30 to 2 PM", Not " My shift was 6: 30 to 7:00 PM". It is hereby corrected..
On p. 366, I entered another group of sign in sheets as Exh. 43, part 4-2. On p. 367,I entered Exh. 43, part 16 B, 3 pages documents stapled together. Those three sheets are my prepared organization charts, page 1, it was from Nov. 24, 1997 to Aug. 2001, Just Efren Gancena as Sarikhani's

assistants, we were Associate Chemist I, we three ran the lab. Underneath there were six or seven Assistant Chemists, p. 2 of the charts, was the situation from August 5, 2001 to Oct. 19, 2002, Nadvar Pakravan was promoted provisionally to Associate Chemist I. But he had to go through one year probation, so it still was Efren Gancena and I actually as assistant supervisor. P. 3 of the chart was from Oct. 20, 2006 Chandy was promoted provisionally to Associate Chemist I on Oct. 20, 2002, he also had to serve one year of probation for the promotion. And on p. 371, line 15-20, Ms Hou: This is important. You recall yesterday or day before yesterday I entered this as evidence when I questioned Mr. Patel on p. 210. This Exh. 37, part 1, Exh. 37, part 2, exh. 37, part 3, exh. 7, part 4. Those were my evaluations for year 1999, year 2000, year 2001, year 2002. So now I show this to Mr. Sarikhani, Line 23, Q: I ask one more question. What was your working hours, usually 8:30 you came in right ? Usually.Line 25, Answer: Arount 8:30, correct. (Not as reporter typed as "Around 8, correct. "(it is hereby corrected.)On p. 372, line 9-10, The Court: Do you recognize those documents to be Ms Hou's evaluations. Line 11, A. That's correct, it's from me. Line 13, Q. Look at one, look at four of them. Line 15, Q: Just 1999, 2000, 2001, 2002. 2003 I retired. (The reporter typed as "just 1999, 2000, 2003, 2002 I retired.", it is hereby corrected.) On p. 372, line 21-22, Q: On page 2, for each of the four years evaluation in writing , here is your comments . Line 25, extended to line 1 of p. 373, Q: She has successfully performed duties of lab supervisor during his absence. Do you see that ? On p. 373, line 2, Madden: Objection , is this a question. (The reporter typed wrong as Ms Hou, it is hereby corrected.)**On p. 372, line 10-11, Ms Hou: I want him to admit that was his writing, I was supervisor of the laboratory successfully ; he certified . Line 14-15, Ms Hou: Each year, that's important,** they want to attack if I am supervisor material. (The reporter typed erroneously as "each area", it's corrected

herein. On p. 374, line 4-5, The Court: Just one moment please. Are those comments and those X made by you on each of those four years. On line 8, The witness : Yes, that's correct.
Those entered sign in sheets, prove that my shift was 6:30 AM to 2 PM, and it proved that the only other Associate Chemist, Efren Gancena came in 8:30 AM or later, and the fact that Mr. Sarikhani's arriving time was 8:30 AM, so every morning before 8:30 AM, I was in charge as lab supervisor. The entered Exh. 43. part 16 B, the Organization chart made by me, signed by the Division Chieg Fred Sachs, p. 1 of the three, it showed that from Nov. 24, 1997 through Aug. 4, 2001 almost four years, there were three Associate Chemist I in the Lefrak Special Projects Lab, the three of them ran the lab. P. 2 and p. 3 of the charts, they showed that those Assistant Chemists gradually got promotion to Associate Chemist I, but they had to serve one year probation, therefore all the way to my retirement in May of 2003, my official retirement date was June 5, 2003, but I left earlier.) I was in charge of the lab in the morning , that means I was about one third of the time as lab supervisor(in 1997, I already came in at about 7 AM).

(Some excerpts of my evaluations of 1999, 2000, 2001 and 2002 are typed herein to manifest that the lab supervisor Sarikhani certified each of the four year so.):

My evaluation of 1999'p. 2, line 4 to line 5: She has successfully performed the duties of laboratory supervisor during his absence.

My evaluation of 2000, p. 2, line 4 to line 5: She successfully performed the duties of laboratory supervisor during his absense.

My evaluation of 2001, p. 2, line 4 to line 5: She successfully performed the duties of laboratory supervisor during his absence.

My Evaluation of 2002, p. 2, line 3-line 4: She has successfully performed the duties of laboratory supervisor during his absence.

(Appropriate excerpts of the letter of Dr. Russel Laudon of July 18, 2002, which expressively stated that I suffered the trauma of April 2002 which caused me Stress Induced Diabetes and Toxi chemical exposure.):

July 18, 2002, Patient : Yen Ming Hou
D/A 4/9/02

Ladies or Gentlemen:

On p. 2, INITIAL IMPRESSION:

1. Strss Indused Diabetes
2. Toxic Chemical Expressure

The patient was recommended to stay out of work for further evaluation. If the patient continued to have symptoms a Pulmonary consultation would be in order.

This patient suffered significant trauma on 4/9/02 as a direct result of her work related injury resulting in a toxic chemical exposure and a worsening of her diabetes secondary to stress.

Respectfully,

Russell J. Laudon, M. D.

Russell Laudon, M. D.
59-10 Junction Boulevard
P. O. Box 730718
Elmhurst, NY 11373-5156

(Appropriate excerpts of the patient's Examination history sheets.):

10-24-02 Wt. 128 lbs B. P. 130/78 T. 97.8 deg F

lab. 12/16/01—glucose 100
6/17/02---glucose 576 (most likely due to stress of incident)
Stress induced diabetes, chemical exposure causing toxic reaction.

(Some appropriate excerpts of trial transcript , p. 200-201, that was on March 28, 2007, Wednesday, My medical doctor, dr. Russell Laudon came to court to testify, he was sent away by Judge Sand.):

p. 200, line 2-25 and extended to the top portion of p. 201:
pp. 200, line 21-25, and extended to line 1 of p. 201.
Mr. Madden: We need some clarification. I believe this gentleman is Ms Hou's doctor. On the first day of this trial your honor very clearly precluded his testimony , plaintiff is flagrantly violating this court's rules. Defendant objects to his testimony and we ask he be removed from the court. **(My explanation now: Originally Judge Pitman permitted the**

testimony by Dr. Laudon, only on Monday, Judge Sand removed Dr. Laudon from the list, Monday night I phoned Dr. Laudon's office and left a message to tell him that he should not come to court, because Judge removed him from the list of witness. But he still came to court on Wednesday, he said that he was subpoenaed.)On p. 201, line 2-3, The Court: I ruled on it once, you may not testify, you are excused. Line 4, Dr. laudon: You are officially saying I am excused. Line 5, The Court: Yes.

(Some excerpts of Osha's Rule , http://www.Osha-slc.gov'OshStd-data'1910 1450 APP. A html)
The third small paragraph under item (e): Hoods should not be used as a means of disposal for volatile chemicals (40, 200)

(Some appropriate excerpts from "Lefrak City Special Project Laboratory Chemical Hygiene Plan [January 2001]):

(Its section 7.03," Local Exhaust Ventilation", the fifth small paragraph.):

The ventilation system shall be inspected every three months. The duct velocity shall be maintained at 100 feet per minute, minimum. A record of each inspection shall be maintained by the Chemical Hygiene Officer.

(Appropriate excerpts of letter from GHI to me, dated November 2006, which advised me of the complications of Diabetes.):

GHI
November 2006

Ming Hou, 177 Beach 114 St., Rockaway Pk., NY 11694-2406.

Dear GHI Member:
At GHI we have your best health in mind. GHI is ensuring that you stay as healthy as possible. To this aim, we provide our members who have diabetes with access to preventive services.

Diabetes can have a harmful affect on your heart, eyes, feet, and kidneys. We strongly recommend following the American Diabetes association (ADA) guidelines for prevention and treatment of diabetes. Studies show that an annual eye exam and a hemoglobin A1C test are necessary to prevent complications.

.....

.....

We wish you the best of health.

Sincerely,

Maria C. Martins-Lopes, M. D., M. S.
Senior Vice President and Chief Medical Officer
Medical Affairs

(I give the result of my last normal ECG and my first abnormal ECG.):

My last normal ECG was on 01/19/05.

My first abnormal ECG was on 8/05.

(Excerpts of my eye doctor's letter, dated July 19, 2006.):

Rumei Yuan, M.D., Ph. D.

133-36 41 st Road, Suite 2 A
Flushing , NY 11355
Tel : (718) 886-8318
Fax: (718) 559-4815

July: 19, 2006

To whom it may Concern:

Ms Ming Yen Hou has been under my care for her eye disease since February 24, 2005. Her current diagnoses Are ocular hypertension, cataract, and dry eye syndrome.

Sincerely

Rumei Yuan, M.D. Ph. D.

(There were two conferences with Magistrate Judge Henry B. Pitman just prior the trial: A. On March 15, 2007, an Order was issued on March 16, 2007. B. On March 22, 2007, an Order was issued on March 23, 2007. At trial, the defendant's attorney Ms Gill always claimed falsely that at the conferences, Judge Pitman already pre-excluded all the issues which I tried to talk about , and the trial Judge , Judge

Sand always sustained Ms Gill's false Objections, thus I could not raise the legitimate issues. Do hereby type down the entire two Orders of Judge Pitman. Except foot notes.):

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
----------x

Ming Yen Hou,

Plaintiff,

98 Civ. 1518
(LBS)(HBP)
ORDER

-against-

New York City Department Of
Environmental Protection,

Defendant.
----------x

Pitman, United States Magistrate Judge:

A conference having been held on March 15, 2007 during which various pre-trial disputes were discussed, for the reasons states on the record in open court and the additional reasons set forth below, it is hereby ORDERED that:

1. Defendant's application for relief from my August 20, 2001 Order ("8-20-01 Order") is denied in all respects.

The 8-20-01 Order had its genesis in an Order. I issued in this matter on November 9, 2000, directing defendant to disclose , within thirty

days, why plaintiff did not receive certain promotions and was not given a key to the premises at which she worked. In response, defendant provided information as to most of the promotions plaintiff claims she was denied, but provided no information whatever explaining why plaintiff was not promoted to Associate Chemist I in 1990, 1992 and 1993. Nor did defendant provide any information explaining why plaintiff was not given a key to her place of employment. As a result of defendant's default, plaintiff moved for sanctions in May 2001.

In a hearing on the motion in August 2001, (1) defendant's counsel stated that defendant did not comply with the November 9, 2000 Order because it could not find information trustworthy enough to allow it to take a position. Specifically, defendant's counsel stated :" We 've been unable to get information that is sufficiently definitive so that we can state a position on behalf of the agency...." Surprisingly, however, defendant did not even identify the information available to it; it simply provided no information whatsoever. Defendant now attempts to offer documents that it contends were produced before August 2001 that contain the information that was the subject of my November 2000 Order.

There are several problems with defendant's position. First, defendant does not explain why it did not timely identify the documents in 2000. when it had been ordered to do so. (2) Second, since the documents defendant now seeks to offer were in existence in 2001 and

had been produced by defendant and were known to defendant at that time, defendant has failed to explain why these documents were not "sufficiently definitive" in 2001 but are sufficiently definitive now.

Defendant has argued that there is no prejudice because the documents in issue were produced to plaintiff long ago. Although I accept that the documents were produced before August 2001, this argument is nor persuasive. If defendant 's own counsel ---who presumably had greater access to the individuals responsible for the personnel determinations in issue---could not identify these documents in the nine months period following my November 2000 Order as the documents that contained the relevant information, it is unreasonable to assume that the Pro Se plaintiff could have made that determination.

Finally, given the proximity of trial, there is no way that prejudice to plaintiff can be undone. If defendant's counsel had offered the documents a year ago, or even six months ago, plaintiff could have been given a limited period of time to take follow-up discovery concerning defendant's newly-minted explanations for its personnel decisions. Defendant's eleventh –hour disclosure precludes that possibility.

In considering defendant's motion, I have also weighed the prejudice to defendant. Although my ruling may result in some prejudice to defendant., the prejudice is certainly not overwhelming. The 1990, 1992, and 1993

promotions are far outside the limitations period and cannot themselves provide a basis for relief. At most, these personnel actions may be admissible as "similar act" evidence to support an inference of discriminatory animus. See National R.R. Passenger Corp. v. Morgan, 536 U. S. 101, 102 (2002) ("[T[he statue [of limitations does not] bar an employee from using the prior acts as background evidence to support a timely claim."); Cobian v. City of New York, 04 Civ. 1941 (Gel), 2006 WL 212292 at *2, n. 1 (S.D.N.Y. Jan. 24, 2006); see generally Fed. R. Evid. 404 (b). Even if I assume that Judge Sand will find that evidence concerning these promotions survives an objection pursuant to Fed. R. Evid. 403, their temporal remoteness from the personnel decisions that are in issue will limit their probative value. Thus, the consequences of preclusion on defendant will not be particularly severe.

Defendant really offers no explanation for its conduct here except the suggestion that a new set of Assistant Corporation Counsels have looked at the case and the documentary evidence and they have reached conclusion that is different than their predecessor's . Although an Order of preclusion is strong medicine, defendant has offered no colorable explanation why it is entitled to any relief. Accordingly, I adhere to my 8-2001 Order in all respects; defendant is precluded from offering evidence concerning its failure to promote plaintiff to Associate Chemist I in 1990, 1992 and 1993 and its failure to provide plaintiff with a key to her place of employment.

2. Since Discovery in this matter closed on December 31, 2002 and no party has sought to amend the pleadings to assert claims or defenses arising out of conduct occurring after that date, neither side shall offer evidence concerning events occurring after that date.

3. Plaintiff shall not offer evidence concerning denials of promotions in 2000 and 2001 and any claim of age discrimination in violation of the Age Discrimination in Employment Act. Summary Judgment has previously been granted dismissing these claims.

4. Defendant's application to preclude the testimony of John Bonnes is granted.

   Plaintiff seeks to offer Bonnes's testimony in support of her theory that she was a more qualified and more competent chemist than her co-employees and that her failure to receive certain promotions must, therefore , have been the product of discrimination. This argument is misguided. Title VII does not protect an employee against all forms of workplace unfairness. Rather, only unfairness that is the product of discrimination against a protected characteristic is outlawed. Nakis v. Potter, 01 Civ. 10047 (HBP), 2004 WL 290371 at *20 (S.D.N.Y. Dec. 15, 2004) (holding that "[h}ostility or unfairness in the workplace that is not the result of discrimination against a protected characteristic is simply not

actionable" under Title VII), citing Brennan v. Met. Opera Ass'n, Inc., 192 F. 3d 310, 318 (2d Cir. 1999) ("A plaintiff must also demonstrate that she was subjected to the hostility because of her membership in a protected class.")Thus, an employer's promoting a less qualified employee over a more qualified employee, although possibly unfair, is not actionable without evidence of illegal discrimination. Fischbach v. D.C. Dep't of Corr., 86 F 3 d 1180, 1183 (D.C.Cir. 1996) ("Title VII Liability cannot rest solely upon a Judge's determination that an employer misjudged the relative qualifications of admittedly quailed candidates.")

Defendant conceded at the March 15 conference that it will not attempt to justify its decisions not to promote plaintiff on the basis of either plaintiff's lack of proficiency as a chemist or the superior technical proficiency of the successful candidates for the promotions denied to plaintiff. Under these circumstances , plaintiff's technical abilities are irrelevant. (30

Finally, even if Bonnes ' testimony were relevant, exclusion would still be appropriate because plaintiff's expert disclusure are defective. Platiff has not provided Bonnes's qualifications, a statement of the compensati0n paid and a list of the other cases in which he has testified. These deficiencies also justify his exclusion. Fed. R. Civ. P. 26 (a)(2), 37 (c)(1).

5. Since plaintiff has indicated has indicated that she will read from the deposition transcripts of available witnesses only if their trial testimony is inconsistent with their deposition testimony , defendant's application to limit plaintiff's use of deposition transcripts is denied as moot.

6. Defendant's objections to items 3, 4, 5 and 6 of plaintiff's subpoena dated February 12, 2007 is sustained. Defendant is directed to double check and confirm to plaintiff in writing by March 21, 2007 that it has no documents in its possession, custody or control that are responsive to item 5 of the subpoena.

7. Defendant's application application to quash plaintiff's subpoena dated February 12, 2007 to the New York State Department of Environmental Conservation is granted.

Dated: New York, New York
March 16, 2007.

SO ORDERED

Henry Pitman
United States
Magistrate Judge

Copies mailed to:

Ms Ming Yen Hou
177 Beach 114 Street
Rockaway Park, New York, 11694

Rippi Gill, Esq.
Kevin Madden, Esq.
Assistant Corporation Counsels
City of New York
100 Church Street
New York 10007

(The ORDER of March 23, 2007.):

UNITED STATE DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
----------x

Ming Yen Hou, 98 Civ. 1518 (LBS) (HBP)

Plaintiff,

-against- ORDER

New York City Department Of Environmental Protection,

Defendant.
----------x

Pitman, United States Magistrate Judgd:

A conference having been held on March 22, 2007 during which various pre-trial disputes were discussed, for the

reasons stated on the record in open court, it is hereby ORDERED that:

1. Defendant shall have the following witnesses available to testify at the trial of this matter on the dates and times indicated:

March 26, @ 10:00 a.m.: DCA Personnel Witness

March 26, @ 2:00 p.m.: Dixit and Sheynker

March 27, @ 10:00 a.m. : Patel

March 28 @ 10:00 a.m.: Patel

March 28 @ 2:00 p.m.: Odorfer

March 29 @ 10:00 a.m. Odorfer and Sarikhani

April 2, @ 10;00 a.m.: Sarikhani

The parties are to directed to confer in good faith during the course of trial toadjust the foregoing schedule as necessary to avoid unused trial time and to minimize the time witnesses spend waiting to testify.

2. Defendant's application to bar Golden from testifying on the ground that he was not identified in the pretrial order in granted.

3. Defendant's application to add documents to the pretrial order concerning the reason plaintiff was not given keys to the laboratory in which she worked is denied.

4. Defendant's application to add the April 12, 2003 memo from Sarikhani to Kantrowitz is

conditionally granted; the memo may be added to the pretrial order upon defendant's submitting evidence that would support a finding that the document was produced to plaintiff in discovery.

5. Defendant's application to add the May 10, 1996 memo from Patel to Weinshall is granted.

6. Defendant's application to quash the subpoena for a witness from DCAS to testify to plaintiff's seniority is denied.

7. Defendant's application to preclude plaintiff from testifying concerning damages is denied. This ruling is without prejudice to defendant's right to object in the event that plaintiff attempts to offer expert testimony she is not competent to offer.

8. Defendant's application to limit Dr. Laudon's testimony is denied without prejudice to whatever objections may be appropriate based on the testimony adduced at trial.

9. Defendant's application to quash the subpoena for Patel's logbooks is granted; the logbooks are irrelevant.

10. Except for Golden, defendant's application to preclude the DEP witnesses identified in paragraph 1 from testifying is denied. At this point, it is impossible to determine whether any of the witnesses will have relevant, admissible testimony. This ruling is without prejudice to any objection defendant may have based on testimony or other evidence offered at trial.

Dated: New York, New York
March 23, 2007

SO ORDERED

Henry Pitman
United States Magistrate Judge

Copies mailed:

Ms Ming Yen Hou
177 Beach 114 Street
Rockaway Park, New York 11694

Rippi Gill, Esq.
Kevin Madden, Esq.
Assistant Corporation Counsels
City Of New York
100 Church Street
New York, New York 10007

(I listed instances on p. 29 of my Appeal Brief, the defendant's attorney Rippi Gill repeatedly tell black lies to object my rightful of testimonies aof the discrimination events, I tried to tell Judge Sand that those claims of Objections were false, those issues were never precluded by Judge Pitman earlier, but Judge Sand just scolded me to sustain the false Objects. Those were just some

additional examples of extreme abuse of discretion by Judge Sand.):

On p. 29 of my Appeal Brief, item C. # Indians' disqualifications: I actually already entered those documents on trial, transcript (p. 164), (and please see Appendix p. 1020, in trial transcript, p. 476-477, on p. 476, line 21-25, I tried to enter the subpoenaed documents which proved the disqualifications of those three Indians, on p. 477, line 1, Ms Gill: Objection; this has all been precluded., line 2, Ms Hou: Why. Line 3-4, The Court: Don't argue with her, I told you when an objection is made, I will deal with it. Don't you attempt to do it. What are these,; these are subpoenas. Line 6-7, Ms Hou: They are, one I asked Trikam Patel about. Line 8, **The Court: These were suppressed by the magistrate. Then after I insisted that it was not ruled on, on trial transcript p. 479, line 3-7, Ms Gill insisted about her black lie,** Ms Gill: We discussed this issue earlier last week with respect to two individuals Ms Hou brought up, Mona Dave and another individual. We stipulated one of them had actually demoted, only one , because that was a document that we had This issue has been decided and discussed. **Line 8, The Court: The Objection is sustained. And please see Judge Pitman's two Orders for the two conferences of March 15, 2007 and March 22, 2007, Appendix p. 1006-1015 & appendix p. 1016-1019, it was never mentioned.**

On p. 29 of my Appeal Brief, Item D: Defendant's attorney Gill told black lie again, it is about my complaint with EEO of NYC DEP in 1994, I entered that complaint on (trial transcript p. 167 already, I just did not recall it, on trial transcript p. 488-489)., Ms Gill claimed that it was" precluded", it was surely not precluded., see Judge Pitman's two court Orders, (appendix p. 1007-1015 & p. 1016-1019.)

On o. 486 of my Appeal Brief, Line 15-16, Ms Hou: Okay, so this , I can't talk. Now this is Complaint of Discrimination. Line 17, The Court: By whom ? Line 18, Ms Hou: Yeah, EEO. Line 19, The Court: Yours? Line 20, Ms Hou: Yeah. Line 21-22, The Court: Yeah, that is---that is in the record already. It is in the record already. Line 23, Ms Hou: I didn't talk about it. Line 24-25, The Court: You didn't talk about it, but it is part of the record in this case, right ?
On p. 487, Line 1, Ms Hou: Who put it in the record ? line 2: The court: Isn't it? Line 3, Ms Hou: I don't think so. Line 4, The Court: Has it been previously received. Line 5, Ms Gill: No, your honor.
Line 6, The Court: It has not been. All right.
On p. 488, line 25 extended to p. 489 , line 1-3, Ms Gill: Your honor, if I may . That was added to our pretrial order as an exhibit. And then we went to Judge Pitman. Line 4-5, Ms Hou: And the issue was decided. And those issues were precluded from raising. And that's what she is referring to. On line 4-5, Ms Hou: I didn't know that Judge Pitman excluded your Solomon's writing. Line 6, The Court: Okay. So it is out of the case , right ? Line 7-8, Ms Hou: So you 're not going to enter that, so I don't have to--. Line 9, The court: Ma'am, do you hear me ?

(On p. 29 of my Appeal Brief, item E.):
Item E. Defendant's attorney Gill told black lie again, when I wanted to talk about NYS Human Rights Complaint filed by my former colleague Yvonne Huang, def's attorney Gill also told black lie that it was previously decided, it was never precluded.(My note now: Please see Judge Pitman's Order of March 16, 2007 and March 23, 2007.)

(ON Trial Transcript p. 486, Judge Sand "sustained' the black lie Objection of Gill again.):

On p. 486 of the trial transcript, line 6-11, Ms Hou: Okay, So this one is out, Next issue, yeah, let me talk about next issue, it is complaint of discrimination—oh, just minute. I am sorry. I rather say this first. It is Exh. 44, part 4-A. This is Human Rights Complaint by Yvonne Huang, October 28, '97. Line 12-13, Ms Gill: Objection, yor honor. This was a ruling that was previously decided. This was all concluded. Line 14, The Court": Yes, sustained, next item?

(The following was about Retaliation , not about Discrimination, when I testified specifically about the retaliation that I suffered in 2003, which drove me to retire from my job.
The defendant's attorney Gill claimed that Judge Pitman ruled that anything after December 31, 2002 is not issue of the case, and Judge Sand Sustained Gill's "Objection.): (My protest now: Retaliation should not be cut off by Discovery.):

On p. 461 of the trial transcript, line 17-19, Ms Hou: Yeah, but this is not about discrimination, this is retaliation after deposition in December of 2002, in deposition of 2002. Line 20, The Court: Whose deposition ? Line 21, Ms Hou: We deposed Trikam Patel and Sarikhani. Line 22, The Court: Whose deposition are you referring to. Line 23, Ms Hou: I'm referring to we deposed Trikam Patel. Line 24, The Court: Yes. Line 25, Ms Hou: And, Ghorban Sarikhani, the lab bosses. Continued to p. 462: Line 1, The Court: Yes ..Line 2, Ms Hou: In December of 2002. Line 3, The Court: Yes. Line 4-7, Ms Hou: **During that deposition, we addressed heavily not allowing me to maintain and troubleshoot my instruments. Then they made me to sign**

my sample log book in March of 2003. Actually—an issue in line 8-10, Ms Gill: Objection, your honor. This issue has been dealt with Judge Pitman. Anything post December 31, 2002 is not an issue in the case, , and is not to be discussed. Line 11, The Court: Sustained. (My Protest: now: Retaliation provision should not stop at end of Discovery).

(Appropriate excerpts of Plaintiff's Proposed Pretrial Order.):

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----------x

Ming Yen Hou,

Plaintiff,

98 Civ. 1518 (LBS)(HBP)

-against-

New York City Department Of Environmental Protection,

Defendant.

Plaintiff's Proposed Pretrial Order

----------x

(On its Item "Exhibit A: Plaintiff's trial list of Exhibits:)

(12). The Discriminatopn Complaints of Title VII (Race and National Origin) with NYS Division For Human Rights of chemists and lab personnel of the Special Projects Labs and Process Control Labs. Bureau of Wastewater Treatment, NYC DEP: namely Efren O. Gancena; Richard Odorfer; Julianito Moraleda and Yvonne Yi-yung Huang, and Law suit Complaint for

Discrimination on Race/National Origin and Disability with U.S. District Court, Southern District of New York ny Michael Golden, whose charges are against the Special Projects Labs, Bureau of Wastewater Treatment, NYC DEP; Michael Golden ' s written statement of 01/18/01.

(Specifically I put as follows the appropriate excerpts of the NYS Human Rights Complaint by Julianito Moraleda .):
STATE OF NEW YORK: EXECUTIVE DEPARTMENT
STATE DIVISION OF HUMAN RIGHTS
Exec. Law ART. 15
SHDR NO: 1B-E-DN-02-5806016-D

x----------x
(State Division of Human Rights on the Complaint of)

Julianoito Moraleda Complainant

-against-

The City of New York; New York City Department Of Environmental Protection Respondent

x----------x
Title VII/ADA: Federal Charge No: 166-A20-3222

I, Julianito Moraleda, residing at 19331 Salerno Avenue, Holliswood, NY 11423, Tel. No. (718)464-5957H, (212) 860-9347(B) charge the above –named respondent whose address is 59-17 Junction Blvd., 18 th Flr. Corona, NY 11368. Tel. No. (718) 595-3432 with an unlawful discriminatory practice relating to Employment in violation of Article 15 of the Executive Law of the State of New York

(Human Rights Law) because of Disability and National Origin.

Date most recent or continuing discrimination took place 06/03/02.

The particulars are:

See attached

Complaint: Title VII/ADA (Int. 6) (1 of 2)/nbm 06/10/02

Received
July 18 2002

Upper Manhattan Regional Office

Julianito A. Moraleda
193-31 Salerno Avenue
Holliswood, NY 11423
Tel: (718) 464 5957 (Home)
(212) 860-9347(work)
(917)270-4508(Mobile)

Received
June 18, 2002

Upper Manhattan
Regional Office

Dear Ms Tolbert:

I am filing this complaint with your office for discrimination because of national origin and disability committed by Mr. Trikam Patel , my supervisor who is of Indian descent, against myself, a Filipino. I started working for the NYC Department of Environmental Protection on September 16, 1990, and am still currently employed there. I was bypassed for promotion to Associate Chemist Level I in August of this year. I feel that I am better qualified than any of those who were promoted above myself –namely James Jones, Nadvar Pakravan, and Yadram Saywack.

The department in which I work has about forty employees of which a Mr. Trikam Patel is the Chief Chemist. The department's full name is:

Special Projects Laboratory
Bureau of Wastewater Pollution Control
NYC DEP

About three months ago I filed a similar complaint with the NYC-DEP-EEO

Here are facts that led me to believe that Mr. Patel discriminated against me and other Filipinos (i.e. people born in the Philippines) who are under him, as well as Filipino job applicants) :

1. Since I joined DEP eleven years ago and up until the present, Patel referred to me several times, the last of which was earlier this year, as "you people".
2. Another co-employee, Efren Gancena, also a Filipino, was promised promotion five years ago, Patel, however, never promoted him as promised and has been treating shabbily after his own promotion to to Chief of Labs.

3. Another co-employee, Maximo Obra, in 1996 was sabotaged by Patel and another Indian cohort, Vikram Shah, by replacing him as Director of Non-Metals Lab and demoting him to a lesser position. Maximo Obra also happens to be a Filipino.
4. Three Pilipino job applicants applied for positions in labs two consecutive times in two years but were rejected outright although they were very much qualified.
5. Trikam Patel and Patrick Jagessar, my immediate boss on several occasions called my attention for "sleeping" on the job although I always denied it and I gave them the doctor's note saying that I have a disability called Sleep Apnea and that sometimes because of the nature of my work I have to close my eyes for a few seconds from time to time.

Here are some facts to show that Mr. Patel engages in bias and favoritism:

1. Employees ofIndian descent who ride the shuttle bus and arrive late are still credited for the whole hour. This does not apply, however , to myself and other Filipinos.
2. Patel pays no heed to the fact that there are at least two Indians who live outside of New York City, which is against the DEP's residency rule. This same treatment is not afforded to Filipinos.
3. All through my eleven years with DEP, I along with my other Filipino co-workers were given the task to study by ourselves different sophisticated instruments whereas my other Indian counterparts were sent for extensive training.
4. I have never been promoted or given a raise, nor have any of my Filipino coworkers been. All those who are promoted are of Indian descent.

5. One of the promotees, Nadvar Pakravan, who is of Indian descent, could not construct a grammatically correct sentence in English. He was not even qualified for the position he held much less the one he was promoted to while I and other Filipinos have been kept in lower positions. I am proficient in both oral and written English.
6. I am currently reporting to an Indian lady much younger and less experienced than I, Who I trained for the job and whose only experience is the present one, while I have been working as a chemist for over thirty years and have held different positions of higher resiponsibilities such as Assistant Director of lab.
7. I have not given over time as freely as my Indian counterparts. Year after I have the lowest total for overtime. This is similar true for other Filipino co-employees.
8. I am given the task of cleaning glassware and sweeping floors whereas my Indian counterparts, who are in similar positions to mine, are not.
9. I am not allowed to play non-Indian music on the radio.
10. Between the two sections of the lab, seven out of the Total thirteen employees are Indian; of the six non-Indians, two are of Indian descent. All the supervisors are either pure Indian or of Indian descent.

Received
Jun 18 2002

Upper Manhattan Regional Office

Yours truly.

Julianito Moraleda

(Some excerpts of trial transcript , which showed that I tried to present that Exhibit 12 of my Proposed Trial Order, so that I could show that the Indian lab bosses Trikam Patel and Purnima Dixit are racist, but Judge Sand scolded me and forbade me to talk about those things, I know when the Indian lab bosses only would favor their own kind, all other kind generally were put back in the privileges and rights, that is discrimination.):

(While I was questioning Mr. Trikam Patel, on. P. 171, p. 172, and the top portion of p. 173.):

p. 171, lin4 14-15, Ms Hou: This is another thing. OK. I mark the Exhibit 12, part 1. Line 16-18, Q: This you must remember, Mr. Gancena filed complaint with New York State Division of Human Rights charging that you discriminated? against him Line 19-20, Ms Gill: Objection; what is the relevance of this testimony. Line 21, The Court: This is some other employee. Line 22-25 and extended too line 1 of p. 172: Ms Hou: This exhibit I put together as Exhibit 12, are the ones the chemists filed discrimination against DEP and most of them against his Special Projects lab, against Trikam Patel, that means he was bias, they charge him with bias, notonly I charge him with bias. P. 172, line 2-9, Ms Gill: Note my objection to that, but these complaints are unduly prejudicial; they have nothing to do with Ms Hou's claim of discrimination. They are

individuals not being called here, with respect to I believe one, and we should have the opportunity to cross-examine those individuals. To have Ms Hou bring up ythe complaints of prior, of other individuals bringing prior complaints under 403, would be unduly prejudicial. **(MY PROTEST NOW: WHEN DEFENDANT's ATTORNEY USING KIRSCHNER"S LETTER OF !975, MORE THAN 30 YEARS AGO, AND I COULD NOT CROSS EXAMINE KIRSCHNER, WHY IT WAS NOT PREJUDICIAL ? AND THAT LETTER OF MORE THAN 30 YEARS AGO, WAS ACCEPTED AND USED TO CONDOMN MY CHARATERISTIC BY JUDGE SAND IN HIS OPINION. THAT LETTER OF MORE THAN 30 YEARS AGO, WAS NOT EVEN NOTARIZED OR SWORN UNDER PENALTY OF PERJURY. THESE COMPLAINTS WITH NYS HUMAN RIGHTS WERE RECENT YEARS, AND ALL WERE UNDER OATH. JUDGE SAND WOULD NOT ALLOW ME TO SPEAK UP, HE ALWAYS STAND TOGETHER WITH DEFENDANT'S ATTORNEY, I WAS DEPRESSED OF OPPORTUNITY TO PRESENTATION AND TO DEFENSE. JUDGE SAND SURELY ABUSED DISCRETION TO THE EXTREMITY.)**

On p. 172, line 10-11, The Court: I take it they were not charging that they were being discriminated against because they were Chinese. Line 12-13, Ms Hou: Some of the charges is the same thing like what I suffered. I like to read it. Line 15, The Court: Objection sustained. No. No. Line 15, Ms Hou: No. Don't allow me to read it. Line 16, The Court: No. Line 17, Ms Hou: Can I do it when I put on stand. Line 18-19, The Court: Can you do what, what you

1360

(3)

Supreme Court, U.S.
FILED
JUL 7 - 2009
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William K. Suter, Clerk

No. 09-173 SUPPLEMENTAL APPENDIX

In The

SUPREME COURT OF THE UNITED STATES

Ming Yen Hou,

Petitioner,

V.

New York City Department Of Environmental Protection,

Respondent.

Supplemental Appendix On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Second Circuit (USCA2 No. 07-3155-CV).

SUPPLEMENTAL APPENDIX FOR MING YEN HOU

Ms Ming Yen Hou
Petitioner Pro Se
177 Beach 114 Street
Rockaway Park, N. Y..
11694. (718)634-1643

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----------x

Ming Yen Hou,

Plaintiff,

-against-

OPINION
98 Civ. 1518 (LBS)

NEW YORK CITY DEPARTMENT OF ENVIRONMENTAL PROTECTION,

Defendant.

----------x

USDC SDNY
DOCUMENT
ELECTRONICALLY FILED
DOC# : _____
DATE FILED :6-19-07

Sand, District Judge

Plaintiff brought this action pursant to 42 U.S.C. §200e, et seq ("State Human Rights Law") and the New York City Civil Rights Law, Section 8-101 et seq of the Administrative Code of the City of New York ("City Human Rights Law"). Although from time to time during the overly protracted length of this litigation plaintiff was represented By counsel 9All of whom she either discharged or who withdrew) she appeared Pro Se during the trial conducted from March 26, 2007 to April 2, 2007. In recognition of

plaintiff's Pro Se status, the court endeavored to give plaintiff broad latitude in the presentation of her case.

Plaintiff was employed as a chemist for the New York City Department of Environmental Protection, a position from which she has since retired as an Associate Chemist, Level 1.

Plaintiff Alleged : (1) that her promotion to Associate Chemist , level I, on November 24, 1997 was delayed due to discrimination based on her race (Asian) and national origin(Chinese); (2). That she was subjected to disparate treatment on the bases of her race and national origin; and (3) that she was retaliated against for filing an internal EEO complaint, for filing a charge of discrimination with the United Stateds Equal Employment Opportunity Commission ("EEOC") on or about November 6, 1997 and amended on or about December 8, 1997 and /or for filing the instant federal law suit on or about March 2, 1998.

I. Alleged Delayed Promotions.

Plaintiff has failed to sustain her claim that her promotion was delayed, let alone having failed to show that such action was discrimination based on her race (Asian) and national origin(Chinese).

The evidence indicated that pursuant to the uniform practices at the DEP no employee was eligible for promotion to Associate Chemist , Level 1 prior to the DEP's "pooldate". ie., the the date the DEP interviews candidates from the civil service list to determine whether a candidate will be promoted off of the civil service list. Plaintiff was interviewed during this process on November 12, 1997 and Fay Jacques, Chief of Lab Support Systems and Trikam Patel, who headed the lab at which plaintiff worked agreed

that plaintiff should be picked from the civil service list as an Associate Chemist. Plaintiff was advised that the promotion would be effective as of November 24, 1997, the same date as the promotion of all other eligible promotees.

Plaintiff's allegations of racial or ethnic discrimination are not supported by any evidence whatsoever. Nor is there any merit in her claim that she should have replaced her supervisor as the Lab Director of the Special Projects Lab. Plaintiff confuses confuses Civil Service status with titles not dependent on Civil Service rating.

Failure to Promote

The 1990, 1992 and 1993 claims of denial of discretionary promotions were held to be time barred by Magistrate Pitman in his Report and Recommendation, Feb. 17, 2004 which this court adopted and approved.

The record of these proceedindings is, however, however , relevant to the background and history of plaintiff 's role at the DEP. As early as 1975 records reflect that plaintiff was regarded as being difficult to work with, engaging in disruptive belligerent behavior, challenging authorities and having a sensitive volatile disposition.

Plaintiff displayed throughout her employment at the DEP that she was an ambitious and inquisitive employee seeking to expand her knowledge of the work of the DEP lab. However, her coworkers and superiors believed she also exhibited a lack of person-to-person skills. She was not regarded as a team player and her challenges to authority and her own prejudices were not appreciated. This perception of plaintiff is reflected in reports and documents throughout her

history at DEP. What is lacking, however, is any evidence that the hostility displayed towards plaintiff was racially or ethnically motivated.

Remaining Claims

Plaintiff's remaining claims do not require extended discussion. Plaintiff's claims of disparate treatment because she is Chinese are not supported by the evidence she has presented. Hou claims that she was not given the instruction and training she sought also lack any evidence of racial or ethnic discrimination. There is no evidence of retaliation because she claimed discrimination, nor that she was deterred from making further complaints.

Conclusion

The history of plaintiff's experiences at DEP is a sad story. It is very much regretted that for reasons stated above so much time has elapsed since the complaint was first filed and trial.

The Court is satisfied that plaintiffr has been given every reasonable opportunity to seek to prove that everything that happened to her at DEP that was not to her liking was the result of the racial and ethnic discrimination. The Court has considered all of Plaintiff's many complaints And finds that she has failed to furnish any convincing evidence that theyn resulted from discrimination.

The Court finds that after a trial, plaintiff has woefully failed to present any evidence in support of her claims of discrimination. Judgment shall enter for the Defendant.

So Ordered.

Dated: New York, New York
June 19, 2007

Leonard B. Sand

U. S. D. J.

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[1] Defendant had moved for judgment under FRCP 50 which relates to jury trials and has no relevance here.

Copies mailed to all parties
6-19-07 jy

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----------x

Ming Yen Hou

Plaintiff,

-against-

New York City Department Of Environmental Protection,

Defendant

98 Civ. 1518(LBS)

JUDGMENT

US DISTRICT COURT
FILED JUL 02 2009
S.D.Of N.Y.

----------x.

A non-jury trial before the Honorable Leonard B. Sand, United Stated District Judge, having begun on April 2, 2007 and at the conclusion of the trial the Court having found plaintiff has woefully failed to present any evidence in support of her claims, and thus, has found in favor of the defendant dismissing the action, it is,

ORDERED, ADJUDGED AND DECREED: That the defendants have judgment in theitr favor; accordingly, the case is dismissed.

Dated: New York, New York
June 22, 2007

So Ordered:
Leonard B. Sand

U.S.D.J.

J. Michael McMahon

Clerk Of Court
(Illegible)

Deputy Clerk